

EAGLE CREST ENERGY GEN-TIE AND WATER  
PIPELINE

BLM Right-of-Way and Land Use Plan Amendment  
BLM Case File No. CACA-054096

SCOPING REPORT  
RESULTS OF SCOPING  
January 2016

California Desert District Office  
22835 Calle San Juan De Los Lagos  
Moreno Valley, CA 92553

Approved by: \_\_\_\_\_  
Deputy District Manager, Division of Resources

\_\_\_\_\_  
Date

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# 1. INTRODUCTION

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The Bureau of Land Management (BLM) has received a right-of-way (ROW) application from Eagle Crest Energy (the Applicant) to construct, maintain, operate and decommission a 500-kV transmission generation-tie in (gen-tie) line and water supply pipeline. These are components to the FERC-licensed Eagle Mountain Pumped Storage Project (Project). Segments of the Project's gen-tie line and water supply pipeline corridors are on BLM lands. The gen-tie line and water supply pipeline routes are partly within lands designated within the California Desert Conservation Area (CDCA), in Riverside County, California. Other BLM lands within the core area of the project also fall within the FERC licensed project footprint and are a part of the ROW application.

Scoping for the project was initiated with the release of the Notice of Intent (NOI) to publish an Environmental Assessment (EA) on November 25, 2015 in the Federal Register (Vol. 80, No. 227 p. 73815). This report describes the scoping process and the results. This report also documents and summarizes all of the public comments that have been received through the scoping activities.

## 1.1 DESCRIPTION OF THE PROJECT

The Eagle Crest Energy Gen-Tie and Water Pipeline Right of Way Project (Project) is located on approximately 2,526 acres of land, of which 1,150 acres are federal land managed by the BLM, with the remaining 1,377 acres privately owned. The ROW is part of an already licensed pumped storage hydroelectric project (FERC Project Number P-13123), licensed by the Federal Energy Regulatory Commission (Commission or FERC) on June 19, 2014 (FERC License).

The Project would be located at the edge of the Eagle Mountains in southeastern California, Riverside County, near the town of Desert Center, in the western Sonoran Desert, in the Colorado Desert Ecoregion. The entire Project area is located within the 25-million-acre CDCA, of which about 12 million acres are public lands managed by the BLM. The CDCA Plan was first developed in 1980 to provide for the use and protection of the desert's natural, cultural, and aesthetic resources. Activities on BLM-managed public lands must conform to the approved land uses as described in the CDCA Plan, as amended.

The Project is also located on lands within the Desert Renewable Energy Conservation Plan (DRECP) (BLM, 2016) area, some of which are designated in the DRECP as Areas of Critical Environmental Concern (ACEC), Development Focus Areas (DFA), and General Public Lands (GPL). These designations allow electric transmission to occur in designated ROW corridors and/or designated utility corridors. The gen-tie line and water supply pipeline routes approved in the FERC License are only partially within a designated utility corridor. However, the gen-tie

corridor is adjacent to an existing gen-tie line owned and operated by Southern California Edison.

Routes within defined utility corridors and on BLM-managed lands require authorization of a ROW grant from BLM. A ROW grant is an authorization to use a specific piece of a public land for a specific project, usually for the life of the project. Eagle Crest Energy's (Applicant or Eagle Crest) application for a ROW grant will be processed under Federal Land Policy and Management Act (FLPMA) Title V. In reviewing a ROW application, BLM will consider all Project information, existing land use information and potential environmental impacts.

### 1.1.1 ***Project Facilities***

As described in the FERC Final EIS, the FERC-licensed Project consists of an upper reservoir, upper water conveyance system, powerhouse, lower reservoir, lower water conveyance system, transmission system, water supply system, water treatment system, and related ancillary facilities.

The upper reservoir site includes: (1) a 191-acre reservoir (in the existing central mining pit) with a total storage capacity of 20,000 acre-feet and a useable storage of 17,700 acre-feet at an elevation of 2,485 feet; (2) a 1,300-foot-long, 120-foot-high saddle dam with a crest at elevation 2,490 feet on the south side of the reservoir and about 4,000 feet to the northwest, and another 1,100-foot-long, 60-foot-high saddle dam with a crest at elevation 2,490 feet on the western side of the reservoir; (3) a 100-foot-long spillway with a spillway crest at elevation 2,485 feet and a 100-foot-wide by 30-foot-long spillway stilling basin; (4) an upper reservoir spillway channel about 4,000 feet long; and (5) a 14,000-foot-long section of Eagle Creek that will convey storm flood waters from the upper reservoir to the lower reservoir. The two saddle dams will be constructed of either roller-compacted-concrete, or concrete faced with rock fill, with final material to be selected during the final engineering design process.

The upper water conveyance system would include: (1) a 29-foot-diameter by 3,963-foot-long upper pressure-tunnel; (2) a 33-foot-diameter by 1,348-foot-long vertical tunnel shaft; (3) a 90-foot-diameter by 165-foot-high underground surge tank attached to the vertical tunnel shaft; (4) a 29-foot-diameter by 1,560-foot-long lower tunnel; and (5) a manifold that transitions from the lower tunnel to four, 15-foot-diameter by 500-foot-long penstock tunnels. The powerhouse facility would consist of: (1) a 72-foot-wide, 130-foot-high, and 360-foot-long underground powerhouse; (2) four reversible pump-turbine units rated at 325 megawatts (MW) each, for a total installed capacity of 1,300 MW; and (3) a separate 46-foot-wide, 40-foot-high, 431-foot-long transformer gallery. The lower reservoir site would include: (1) a 163-acre reservoir (in the existing eastern mining pit) with a total storage capacity of 21,900 acre-feet and a useable storage of 17,700-acre-feet at elevation 1,092 feet; (2) a reservoir inlet/outlet structure; (3) a 15-foot-wide reservoir spillway with a spillway crest at elevation 1,094 feet; and (4) a

reservoir spillway discharge channel extending 6,665 feet from the spillway to an alluvial fan in the Chuckwalla Valley.

The lower water conveyance system includes: (1) four, 17-foot-diameter by 75-foot-long draft tube tunnels; (2) a manifold that transitions from the draft tube tunnels to the tailrace tunnel; and (3) a 33-foot-diameter by 6,835-foot-long tailrace tunnel. The transmission system would include: (1) four, 6,000-foot-long, 18-kilovolt (kV) underground transmission cables that extend through the powerhouse access tunnel and a vertical transmission shaft to the ground surface and then 4,000 feet overhead to a switchyard; (2) a 500-foot-wide by 1,100-foot-long switchyard; and (3) a 16.4-mile-long, double circuit 500-kV gen-tie line from the switchyard to the existing Red Bluff interconnection collector substation.

The water supply system includes: (1) three water supply wells constructed on privately owned property and (2) an underground water supply pipeline, ranging from 12 to 24 inches in diameter, totaling 15.3 miles, extending from the well properties to the lower reservoir.

The water treatment system includes: (1) a reverse osmosis system; (2) pipelines from the upper and lower reservoirs to the reverse osmosis facility; and (3) desalination facilities with piping from the reverse osmosis facilities.

The related ancillary facilities include: (1) a 28-foot-wide, 28-foot-high, by 6,625-foot-long access tunnel to the underground powerhouse; (2) ±6 miles of permanent construction and access roads; (3) staging, storage, and administration areas near the switchyard; and (4) appurtenant facilities.

**Activities on BLM-managed Lands.** Activities on BLM-managed lands that would be permitted upon BLM's decision to approve the Plan Amendment (PA) and issue a Project ROW include the following:

- Construction of new access roads within the Central Project Area
- Improvements to existing access roads
- Construction and operation of monitoring wells and seepage recovery wells
- Construction and operation of the south saddle dam for the upper reservoir
- Construction and operation of a surge tower
- Construction and operation of underground water conveyance tunnels and powerhouse
- Construction and operation of upper reservoir and lower reservoir spillways
- Construction and operation of new gen-tie line, including:
  - Installation of new steel lattice structures
  - Temporary use of equipment staging areas, within the gen-tie line ROW
  - Pulling and tensioning site for the gen-tie line, within the Project ROW
- Construction and operation of a water supply pipeline
- Revegetation of areas disturbed by construction activities

## **2. SCOPING PROCESS SUMMARY**

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Scoping is a timeframe during which public and agency input is solicited to identify the range, or scope, of issues to be addressed during the planning and environmental analysis for a proposed project. BLM solicits comments from relevant agencies and the public; organizes and analyzes the comments received; identifies the issues that will be addressed during the environmental analysis; and compiles this information into an organized report (the Scoping Report). A scoping process is required to be a minimum of 30 days beginning with the publication of the NOI in the Federal Register. The official scoping period for the Project commenced on November 25, 2015 and concluded on December 28, 2015. Comments received within this period were used to compile this scoping report.

### **2.1 NOTICE OF INTENT**

The public scoping process for Eagle Crest’s ROW Application and PA officially began with the publication in the Federal Register of the “*Notice of Intent To Amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment (EA) for the PA and the Eagle Crest Pumped Storage Project, California.*” The NOI was published on November 25, 2015.

### **2.2 WRITTEN COMMENTS**

8,611 written comment letters were received via e-mail during the public scoping period. These comments are included in Appendix A.

### **2.3 COMMENTER DEMOGRAPHICS**

Comments were received from two federal agencies, eight organizations consisting of special interest environmental groups and local businesses, and 8,601 individuals. Of the 8,601 individual comments, 8,600 were identical comments from members of one special interest organization (National Parks Conservation Association).

### **3. COMMENT SUMMARY AND ANALYSIS**

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This section provides a summary of the issues and concerns raised by the commenters. The comments discussed below are summarized or paraphrased from the original comment letters. For this report, the issues have been grouped into one of the three following categories:

- Issues or concerns that could be addressed by effects analysis
- Issues or concerns that could develop an alternative and/or a better description or qualification of the alternatives.
- Issues or concerns outside the scope of the EA.

Original comment letters may be reviewed upon request at the BLM California Desert District Office at 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553, during normal business hours (8:00 AM-4:00 PM, Monday through Friday).

#### **3.1 EFFECTS ANALYSIS**

Comments under the Effects Analysis category will be addressed in the affected environment section of the EA or in the environmental consequences section for each alternative.

#### **3.2 PURPOSE AND NEED**

Effects Analysis should clearly identify the need, and identify and describe the underlying problem, deficiency, or opportunity that the action is meant to address.

#### **3.3 RESOURCE ISSUES**

##### **3.3.1 *General***

The following is a list of comments, concerns, and claims made in the comment letters received by BLM:

- BLM should conduct an Environmental Impact Statement (EIS).
- Commenter is concerned that the Project will result in more industrial development in the region.
- Analysis should consider other BLM actions, other federal actions, and non-federal (including private) actions.
- A new EIS should be prepared since the original EIS is 17 years old. [BLM note: The FERC EIS was completed in 2012.]
- BLM should evaluate the best possible use for the land.
- The lands should go to the Joshua Tree National Park (JTNP) given all the development in the region.
- BLM's proposal to only complete an EA is inadequate.

- A Finding of No Significant Impact is not possible.
- Desert Tortoise Council request to be considered an Affected Interest.
- Desert Tortoise Council registers opposition to Project.
- BLM should address all deficiencies identified by the Department of Interior (DOI) in its request to FERC for rehearing and stay of the license in a supplemental EIS.
- Analysis should be at the same level as the FERC EIS to rectify DOI identified deficiencies.
- FERC EIS is deficient due to lack of access to central area during data gathering phase.
- BLM should gather information on desert tortoises and bighorn sheep in the central Project area since applicant has access and update affected environmental and environmental consequences.
- Desert Protection Society opposes Project because it violates numerous laws including NEPA, ESA, and FLPMA. The proposed EA, and all future environmental reviews, should address these violations.
- The EA should take a “hard look” at the Project’s impacts and weigh those effects against minimal benefits.
- The FERC EIS fails to comply with NEPA and should not be relied on by BLM in conducting its environmental review.
- The FERC EIS fails to analyze impacts of decommissioning.
- The FERC EIS is flawed due to its use of stale data and numerous deficiencies.
- Center for Biological Diversity urges BLM to reject the ROW application because Project would undermine existing conservation investments and destroy key habitats.
- Analyze thoroughly the site resources to determine how best to avoid and mitigate for impacts.

### 3.3.2 ***Water Resources***

- The Project should commit to the use of natural washes in their natural form and location for flood control.
- The impacts from the Project on water resources and desert habitats were not adequately assessed in the earlier EIS.
- BLM should direct Eagle Crest to begin monitoring of wells in the community of Desert Center, local farms, and the surrounding area to provide a baseline.
- BLM along with other water resource agencies should analyze the long and short-term effects of the Project in combination with all other potential groundwater use.
- BLM should undertake an independent review of the anticipated effects of climate change on precipitation and groundwater recharge in the Mojave and Sonoran Desert regions using most recent scientific publications.
- The FERC EIS shifts the burden of solving the cumulative groundwater withdrawals onto the public.
- The FERC EIS dismisses the Project’s potential to cause acidic drainage.
- BLM should ensure that use of water for the proposed Project (and cumulative Projects) over the life of the proposed Projects will not impair those values that depend on it (plant and wildlife).
- BLM should require Eagle Crest to agree that no water rights will be created.

- BLM should ensure that the groundwater would not be used off-site.
- Analysis should include tritium and Carbon<sub>14</sub> to determine age of groundwater in the Basin.
- Analysis should include the impacts of denuding the desert through excessive groundwater pumping that would expose residents and wildlife to arsenic.
- The EA should estimate the quantity of water the Project will require during construction and during operations. Describe the source and potential effects on other users.
- The potentially affected groundwater basin should be identified and impacts to groundwater recharge, springs, or other surface water bodies and biologic resources analyzed.
- The EA should include a discussion of cumulative impacts to groundwater resources with the basin, including reasonably foreseeable impacts from other proposed Projects.
- The EA should identify available technologies to minimize or recycle water.
- The EA should address potential effects of Project discharges on surface and groundwater quality, including wastewater discharges from office or maintenance buildings, discharge of hydrostatic testing waters and discharge of dewatering water.
- The EA should describe all waters of the U.S. that can be affected by the Project alternatives, and include maps that clearly identify all waters within the Project area including ephemeral discharges. The discussion should include acreages and channel lengths, habitat types, values and functions.
- The EA should include alternatives consistent with Clean Water Act 404.
- Address water quality issues related to the recharge rate of the aquifer, its hydraulic connectivity to groundwater in the JTNP, analysis of recharge rates, and impact of pumping to surface water resources in the JTNP and other protected lands.
- Analysis should include water quality issues related to acid mine drainage.
- Analyze water quality issues related to construction and disturbance of lands for the proposed action and their impact to drainages, surface water and groundwater.
- The EA should consider eutrophication of the lakes.
- The analysis should include review of new USGS studies of water resources in the Chuckwalla Valley.

### 3.3.3 ***Biological Resources***

- BLM should set up a monitoring protocol to measure any die-off of microphyll woodland in the area, in case groundwater pumping lowers the water table below the roots of native trees.
- Commenter requests detailed seasonal studies of protected species with full disclosure of survey methods and results to the public.
- Commenter requests three alternative corridors be surveyed and analyzed to minimize impacts to protected species.
- The Project could undermine conservation of tortoises by the National Park Service (NPS).
- Cumulative impact analysis should be performed for impacts to tortoises from all Projects as it is expected predation will increase.
- Commenter requests vegetation maps be large enough scale for evaluating.

- Habitat mapping should be at a half-acre minimum scale.
- Surveys should be conducted at optimum times of year with consideration for the current precipitation levels.
- The FERC EIS improperly defers commissioning biological studies and formulating mitigation measures.
- The potential impacts of construction, installation and maintenance activities on habitat and species should be discussed.
- The EA should identify all petitioned and listed species and critical habitat that might occur in the area.
- The EA should identify and quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative.
- The EA should provide a recent status update of Section 7 ESA consultation.
- The EA should indicate what measures will be taken to protect important wildlife habitat areas.
- The EA should describe how the Project will meet the requirements of Executive Order 13112 (Invasive Species).
- The EA should include new information related to bighorn sheep movements, NPS data, and peer reviewed literature related to disturbances, use of water sources, and wildlife corridors.
- Further analysis of the impact of the two proposed brine ponds on avian species as well as avian mitigation measures, which have not been analyzed.
- Seasonal surveys should be conducted before analysis as part of the NEPA process.
- Confidentiality agreements should not be allowed for the surveys in support of the Project.
- Surveys for plants and plant communities should follow California Native Plant Society and California Department of Fish and Wildlife (CDFW) guidelines.
- A full floral survey should be conducted.
- Surveys for animals should include an evaluation of the California Wildlife Habitat Relationship System's Classification Scheme.
- All rare species need to be documented with a California Natural Diversity Data Base form and submitted to the CDFW.
- The analysis should include all direct, indirect and cumulative impacts to sensitive habitats.
- The analysis should include the potential for establishment of unpermitted recreational activities, the introduction of non-native plants, the introduction of lighting, noise, and the loss and disruption of essential habitat due to edge effects.
- The analysis should include alternative proposals for avoiding, minimizing and mitigating the impacts to the desert tortoise and any habitat, including rejecting the proposed ROW.
- Acquisition of lands that will be managed in perpetuity for conservation of the tortoise should be included as part of the strategy to mitigate impacts.
- A detailed final tortoise translocation plan should be included and which contains methodologies for determining appropriate conservation areas, impacts to existing host tortoise populations at translocation site, when/how translocation occurs, how tortoise diseases will be addressed and requisite monitoring.

- Success criteria for the tortoise should be clearly identified.
- Analysis should include potential impacts to the Yuma Ridgway rail.
- The analysis should include an evaluation of the high probability of collision with transmission lines for avian species.
- An alternative should evaluate the reduction of impacts to the burrowing owl by moving the Project away from nesting burrows.
- BLM should reject ROW application because the proposed brine pools will attract birds, and increase mortality through the draining and pumping, an unmitigable impact that will undermine conservation efforts.
- Avoidance is preferable for rare plants as transplanting is unsuccessful.
- The analysis should include locally rare species, not merely federal- and state-listed.
- Analysis should include an evaluation of all species found at the edge of their ranges or that occur as disjunct locations and evaluated for impacts. Such species include the desert kit fox and American badger.
- Analysis of impacts should include the potential to be sited on the sand transport corridor.
- Analysis should include impacts to wildlife movement as a portion of the ROW is located within an identified California Essential Habitat Connectivity corridor.
- Analysis should include the impacts associated with habitat fragmentation from the construction and maintenance of the structures.

### 3.3.4 ***Climate Change***

- The FERC EIS fails to analyze how global warming will affect the Project's environmental impacts.
- There should be a complete analysis of how much carbon will not be absorbed due to denuding the desert from pumping and how much will be added to the environment from the transmission lines.
- The Project could have a carbon multiplier effect due to pumping inefficiencies as well as double transmission losses (pumping/generation).
- Commenter requests to know how power from the Project will be counted given the possibility of a pumping power mix.
- Commenter requests real data to understand carbon emissions.
- The EA should include an estimate of the greenhouse gas emissions associated with the Project, qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation to reduce Project related greenhouse gas emissions.
- The EA should make clear whether commitments have been made to ensure implementation of design or other measures to reduce emissions or to adapt to climate change impacts.

### 3.3.5 ***Air Quality***

- The EA should provide a discussion of ambient air conditions, and National Standards and nonattainment areas, and potential air quality impacts, including cumulative and indirect.

- Emissions should be estimated for the construction and operational phases. Mitigation measures should be discussed.
- Analyze whether the transmission lines will impact ozone levels in JTNP.
- Analyze how construction would impact PM<sub>10</sub> levels in the JTNP and other federal protected wilderness areas and Area of Critical Environmental Concern.

### 3.3.6 ***Cultural Resources***

- The EA should describe the process and outcome of consultation between BLM and each of the tribal governments within the Project area, issues that were raised and how those issues were addressed in the selection of the proposed alternative.
- All impacts to tribal, cultural or other treaty resources should be described in the EA and potential mitigation measures discussed.
- The EA should address the possible existence of Indian sacred sites in the Project area.
- The EA should provide a summary of all coordination with Tribes and with the State Historic Preservation Office/Tribal Historic Preservation Office, including identification of National Register of Historic Places eligible sites, and development of a Cultural Resource Management Plan.

### 3.3.7 ***Environmental Justice***

- The Environmental Justice element should be analyzed for the small communities of Eagle Mountain, Desert Center, and Lake Tamarisk.

### 3.3.8 ***Special Designations (pending Desert Renewable Energy Conservation Plan [DRECP] and NPS boundary study)***

- BLM should analyze the effects of the overall Project on the conservation designations it makes in the final decisions on the DRECP Land Use Plan Amendment (LUPA).
- BLM should not make a decision on the proposed ROW Project until it reaches a final decision on the DRECP LUPA.
- BLM should analyze the effects of the overall Project on options for adjusting the boundary of the JTNP and coordinate with NEPA in developing effects analysis.
- BLM's decision on the ROW for the Project should not adversely impact or be inconsistent with the NPS boundary modification.
- Deserted mine town should be managed by the NPS to attract tourism.
- NPS feels the information about the boundary study should be evaluated in the EA.

### 3.3.9 ***Hazardous Materials/Waste Management***

- The EA should address potential direct, indirect and cumulative impacts of waste generation, including hazardous waste, from construction and operation. The document should identify projected waste types and volumes and identify expected storage, disposal, and management methods. Identify the applicability of federal and state hazardous and solid waste requirements.

### 3.3.10 *Visual Resources*

- Analyze impact Project would have to viewsheds from federally designated wilderness within JTNP and other protected BLM lands.

## 3.4 **OTHER ISSUES**

- The BLM should conform to land use planning of FLPMA as well as of NEPA to include public participation.
- New transmission lines need to be analyzed fully, not segmented off from the Project.
- Analysis should include the possibility of conservationist's purchasing the site from Kaiser to give to JTNP.
- Cumulative impact analysis should describe the threat to resources as a whole, presented from the perspective of the resource not the Project.
- The EA should describe the methodology used to assess cumulative impacts. The U.S. Environmental Protection Agency (EPA) recommends the methodology developed by the EPA, Federal Highway Administration, and Caltrans.
- The analysis of cumulative impacts should consider other Projects on the resources that would be affected. EPA recommends a thorough discussion of cumulative impacts to water and biological resources.
- The EA should assess potential exposures to the fungus *Coccidioides* that could result from soil-disturbing activities of the Project, and the susceptibilities of workers and nearby residents to Valley Fever.
- Include an Environmental Awareness Program and a notification plan for Valley Fever for nearby residents.
- Threshold of significance has been exceeded for the following: its highly controversial, impacts to the JTNP unique area, it sets a precedent for future actions, effects are highly uncertain as they rely on inadequate or inaccurate data, cumulatively significant to resources, and the flawed FERC EIS is inappropriate to tier from.
- Analyze how Project would impact natural soundscapes, wildlife and visitor experience at JTNP and nearby BLM lands.
- Analyze the risks associated with long-term treatment and disposal of more than 17,000 acre feet of potentially hazardous acid mine drainage upon decommissioning.

## 3.5 **ALTERNATIVE DEVELOPMENT PROCESS AND PRELIMINARY RESULTS**

Comments in this category will be considered in the development of alternatives or can be addressed through design criteria in the alternative descriptions.

- Because there is no environmentally friendly way to approve the Project, the BLM should adopt a No Action Alternative for this EA.
- A reasonable range of alternatives should be considered such as locations and storage technologies.

- Analysis should include in its No Action Alternative application denial due to significant and unmitigable impacts as a whole on the desert resources including the JTNP.
- BLM should establish an independent set of objectives that do not unreasonably limit the analysis of feasible alternatives including alternative sites and alternative methods of storing energy.
- Alternatives should include alternative configurations and routes for the pipeline and transmission line.
- The EA should provide a discussion of the reasons for the elimination of alternatives which are not evaluated in detail.
- Analysis should consider a private lands alternative and alternatives that eliminate impacts to wildlife through subsurface transmission lines.

## 4. ACRONYMS

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Applicant	Eagle Crest Energy
BLM	Bureau of Land Management
CDCA	California Desert Conservation Area
CDFW	California Department of Fish and Wildlife
Commission or FERC	Federal Energy Regulatory Commission
DRECP	Desert Renewable Energy Conservation Plan
DOI	Department of Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FLPMA	Federal Land Policy and Management Act
gen-tie	generation interconnection transmission line
JTNP	Joshua Tree National Park
kV	kilovolt
LUPA	Land Use Plan Amendment
MW	megawatt
NEPA	National Environmental Policy Act
NOI	Notice of Intent
NPS	National Park Service
PA	Plan Amendment
Project	Eagle Mountain Pumped Storage Project
ROW	right of way

## 5. **APPENDIX A – Comment Letters**

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

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Gregg Miller, Deputy District Manager  
Bureau of Land Management  
California Desert District  
22835 Calle San Juan de Los Lagos  
Moreno Valley, California 92553

Subject: Notice of Intent to Amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, Riverside County, California

Dear Mr. Miller:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508) and our NEPA review authority under § 309 of the Clean Air Act.

To assist in the scoping process for this project, we have identified several issues for your attention in the preparation of the Draft EA. These issues include: impacts to water, air, biological resources, invasive species management, cultural resources and habitat protection, among others.

We are available to discuss our comments. Please send one hard copy and one CD ROM copy of the Draft EA to this office when it is released for public review (mail code ENF-4-2). If you have any questions, please contact Scott Sysum, the lead reviewer for this project. Scott can be reached at (415) 972-3742 or [sysum.scott@epa.gov](mailto:sysum.scott@epa.gov).

Sincerely,

Tom Plenys  
Environmental Review Section

Enclosure:  
EPA's Detailed Comments

**US EPA DETAILED COMMENTS ON THE NOTICE OF INTENT TO AMEND THE RESOURCE MANAGEMENT PLAN FOR THE CALIFORNIA DESERT CONSERVATION AREA AND PREPARE AN ENVIRONMENTAL ASSESSMENT FOR THE PLAN AMENDMENT AND THE EAGLE CREST PUMPED STORAGE PROJECT, RIVERSIDE COUNTY, CALIFORNIA, DECEMBER 17, 2015**

**Purpose and Need**

The Draft Environmental Assessment should clearly identify the underlying purpose and need for the project and for which alternatives are being proposed (40 CFR 1502.13). When formulating the need, identify and describe the underlying problem, deficiency, or opportunity that the action is meant to address. The purpose then defines the measurable objectives to be used for evaluating the effectiveness of potential alternatives toward meeting the need.

**Alternatives Analysis**

Reasonable alternatives should include, but are not necessarily limited to, alternative configurations and routes for the pipeline and transmission line. The Draft EA should provide a discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

A reasonable range of alternatives will include options for avoiding environmental impacts. The Council on Environmental Quality regulations for implementing the National Environmental Policy Act state that alternatives should include appropriate mitigation measures not already included in the proposed action or alternatives (40 CFR 1502.14(f)).

**Water Resources**

***Water Supply and Water Quality***

The Draft EA should estimate the quantity of water the project will require during the construction phase and during operations. Describe the source of this water and potential effects on other water users. If groundwater will be used, the potentially-affected groundwater basin should be identified and impacts to groundwater recharge, springs or other surface water bodies and biologic resources should be analyzed. The Draft EA should include a discussion of cumulative impacts to groundwater resources within the hydrographic basin, including reasonably foreseeable impacts from other projects that have been proposed such as the Eagle Mountain pumped storage project and nearby renewable energy facilities. Available technologies to minimize or recycle water should be identified.

The Draft EA should also address the potential effects of project discharges on surface and groundwater quality, including wastewater discharges from any office or maintenance buildings, discharge of hydrostatic testing waters and discharge of dewatering water.

***Clean Water Act Section 404***

The project applicant should coordinate with the U.S. Army Corps of Engineers to determine if the proposed project requires a Section 404 permit under the Clean Water Act. Section 404 regulates the discharge of dredged or fill material into waters of the United States (WOUS), including wetlands and other *special aquatic sites*. The Draft EA should describe all WOUS that could be affected by the project alternatives, and include maps that clearly identify all waters within the project area, including

ephemeral drainages. The discussion should include acreages and channel lengths, habitat types, values, and functions of these waters. If a 404 permit is required, the project must comply with *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA (“404(b)(1) Guidelines”). Pursuant to 40 CFR 230, any permitted discharge into WOUS must be the least environmentally damaging practicable alternative available to achieve the project purpose. The Draft EA should include, and craft NEPA alternatives consistent with, evaluating project alternatives in this context, in order to demonstrate the project’s compliance with the 404(b)(1) Guidelines. If, under the proposed project, dredged or fill material would be discharged into WOUS, the Draft EA should discuss alternatives to avoid those discharges.

### ***Avoiding Desert Washes Regardless of Jurisdiction***

The arid Southwest and Midwest portions of the country have the highest number of seasonal and rain-dependent streams. According to the National Hydrography Dataset, 73% of California’s stream network is classified as non-perennial. Non-perennial streams represent nearly all of the stream network in more arid regions and most of the headwater streams in the more mountainous regions of the State.<sup>1</sup> For these non-perennial streams, infrequent, short-lived but high-volume flash flows are the norm. These flows, although rare, are essential to the integrity of the nation’s arid ecosystems, underscoring the importance of their protection. These flows also recharge groundwater by storing and circulating water in the stream network across a landscape.

The Draft EA should commit to the use of natural washes, in their present location and natural form and with adequate natural buffers, for flood control to the maximum extent practicable. Because placement of the underground pipeline could result in erosion, migration of channels and local scour, the pipeline route should avoid washes if practicable to minimize direct and indirect impacts to the washes. Transmission line infrastructure should similarly avoid all washes to the greatest extent feasible. The potential damage that could result from disturbance of flat-bottomed washes includes alterations to the hydrological functions that natural channels provide in arid ecosystems: adequate capacity for flood control, energy dissipation, and sediment movement, as well as impacts to valuable habitat for desert species.

### **Air Quality**

The Draft EA should provide a detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards and nonattainment areas, and potential air quality impacts of the project, including cumulative and indirect impacts, for each fully evaluated alternative.

Emissions should be estimated for the construction phase and the operational phase. Mitigation measures, both applicant proposed mitigation measures and BLM proposed mitigation measures, for construction emissions, fugitive dust and operations should be discussed. Typical mitigation measures include construction emission reductions, fugitive dust control measures, mobile and stationary source controls and administrative controls.

### **Biological Resources and Habitat**

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<sup>1</sup>California State Water Resources Control Board. *Extent of California’s Perennial and Non-Perennial Streams*. October 2011. <[http://www.swrcb.ca.gov/water\\_issues/programs/swamp/docs/reports/mgmt\\_memo2extent.pdf](http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/reports/mgmt_memo2extent.pdf)>

### ***Desert Biodiversity***

Impacts to biological resources can be substantial in desert habitats. Less than 1% of the vegetation in deserts is riparian (streamside), yet most desert animal species, whether birds, mammals, reptiles or amphibians, rely on riparian habitat for at least part of their life cycle.

Efforts to preserve vegetation and habitat should be pursued. In arid areas, disturbed vegetation is slow to recover. Practices that preserve habitat, minimize weed invasion, and prevent erosion should be incorporated into the project.

The potential impacts of construction, installation, and maintenance activities on habitat and species should be discussed in the Draft EA.

### ***Species and Habitat Protection***

The Draft EA should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. The Draft EA should identify and quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and mitigate impacts to these species. Emphasis should be placed on the protection and recovery of species due to their status or potential status under the Endangered Species Act. We recommend that the BLM consult with the U.S. Fish and Wildlife Service and, if required, prepare a Biological Opinion under Section 7 of the ESA if there are threatened or endangered species present. The Draft EA should provide a recent status update of this report if this action has been or will be undertaken. Analysis of impacts and mitigation on covered species should include:

- Baseline conditions of habitats and populations of the covered species;
- A clear description of how avoidance, mitigation and conservation measures will protect and encourage the recovery of the covered species and their habitats in the project area;
- Monitoring, reporting and adaptive management efforts to ensure species and habitat conservation effectiveness.

The Draft EA should indicate what measures will be taken to protect important wildlife habitat areas from potential adverse effects of proposed activities.

### ***Invasive Species***

Executive Order 13112, *Invasive Species* (February 3, 1999), mandates that federal agencies whose actions may affect the status of invasive species shall use their relevant authorities to prevent their introduction, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. The Draft EA should describe how the project will meet the requirements of E.O. 13112. The EPA recommends including an invasive plant management plan for the monitoring and control of noxious or invasive weeds.

### ***Cumulative Impacts***

Cumulative impact analyses describe the threat to resources as a whole, presented from the perspective of the resource instead of from the individual project. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR §1508.7). Discussions of cumulative impacts are usually more effective when included in the larger discussions of

environmental impacts from the action (the environmental consequences chapter), as opposed to locating cumulative impact analyses in a separate chapter.

The Draft EA should describe the methodology used to assess cumulative impacts. We recommend the methodology developed jointly by the EPA, the Federal Highway Administration, and the California Department of Transportation, available at:

[http://www.dot.ca.gov/ser/cumulative\\_guidance/approach.htm](http://www.dot.ca.gov/ser/cumulative_guidance/approach.htm). While this methodology was developed for transportation projects, the principles and steps in this guidance offer a systematic way to analyze cumulative impacts for any project.

The analysis of cumulative impacts should consider other projects, in addition to other developments in the area and general resource trends, on the resources that would be affected by the proposed project. We recommend thorough discussions of cumulative impacts to water resources and biological resources.

### **Climate Change Effects**

The EPA believes the Council on Environmental Quality's December 2014 revised draft guidance for Federal agencies' consideration of Green House Gas emissions and climate change impacts in NEPA outlines a reasonable approach, and we recommend that the Bureau of Land Management use that draft guidance to help outline the framework for its analysis of these issues. Accordingly, we recommend the Draft EA include an estimate of the GHG emissions associated with the project, qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions. In addition, we recommend that the NEPA analysis address the appropriateness of considering changes to the design of the proposal to incorporate GHG reduction measures and resilience to foreseeable climate change. The Draft EA and Final EA should make clear whether commitments have been made to ensure implementation of design or other measures to reduce GHG emissions or to adapt to climate change impacts.

### **Hazardous Materials/Waste Management**

The Draft EA should address potential direct, indirect and cumulative impacts of waste generation, including hazardous waste, from construction and operation. The document should identify projected waste types and volumes and identify expected storage, disposal, and management methods. Identify the applicability of federal and state hazardous and solid waste requirements. The generation of hazardous waste should be minimized.

### **Valley Fever (Coccidioidomycosis)**

The number of Valley Fever cases in the United States has been steadily increasing over the past few years. There were over 20,000 reported cases in 2011, and the Center for Disease Control estimates that an additional 150,000 cases go undiagnosed each year. About 25% of all cases occur in California. During the five-year period of 2006-2010, there were 305 reported cases of Valley Fever within Riverside County, with 16 reported deaths.<sup>2</sup>

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<sup>2</sup> County of Riverside Department of Public Health. *Impact of Valley Fever in Riverside County, 2006-2010*. Vol 6: Epidemiology and Program Evaluation, August 2012.

Underground pipeline projects or overhead transmission line projects that disturb desert soil may have impacts on the health of workers and nearby residents, including valley fever and other respiratory complaints.

The Draft EA should assess potential exposures to the fungus *Coccidioides* that could result from soil-disturbing activities of the project, and the susceptibilities of workers and nearby residents to Valley Fever. Include, in the Draft EA, an Environmental Awareness Program to be implemented for the workers and a notification plan for the nearby residents.

The worker training should include training on the health hazards of Valley Fever, how it is contracted, what symptoms to look for, proper work procedures, how to use personal protective equipment, the need to wash prior to eating, smoking or drinking and at the end of the shift, and the need to inform the supervisor of suspected symptoms of work-related Valley Fever. The training should identify those groups of individuals most at risk and urge individuals to seek prompt medical treatment if Valley Fever symptoms (flu-like illness with cough, fever, chest pain, headache, muscle aches, and tiredness) develop.

### **Cultural Resources and Coordination with Tribal Governments**

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials. The Draft EA should describe the process and outcome of government-to-government consultation between the BLM and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

#### *National Historic Preservation Act and Executive Order 13007*

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer. Any impacts to tribal, cultural, or other treaty resources should be described in the Draft EA and potential mitigation measures discussed.

Executive Order 13007, *Indian Sacred Sites* (May 24, 1996), requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. The Draft EA should address the possible existence of Indian sacred sites in the project area. It should address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how the BLM will avoid adversely affecting the physical integrity, accessibility, or use of sacred sites, if they exist. The Draft EA should provide a summary of all coordination with Tribes and with the SHPO/THPO, including identification of NRHP eligible sites, and development of a Cultural Resource Management Plan.



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE  
Joshua Tree National Park  
74485 National Park Drive  
Twentynine Palms, California 92277-3597

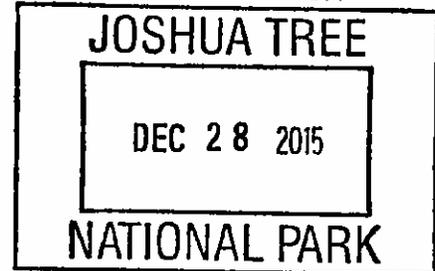
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LAND MGMT.  
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CALIF. DESERT DISTRICT  
MORENO VALLEY, CA

1.A.1 (JOTR-S)

Greg Miller, Deputy District Manager, Resources  
Bureau of Land Management  
California Desert District  
22835 Calle San Juan de Los Lagos  
Moreno Valley, California 92553



Re: BLM Resource Plan Amendment and Environmental Assessment for the Eagle Crest Pumped Storage Project

Dear Mr. Miller:

The Bureau of Land Management (BLM) announced on November 25, 2015 of its intent to prepare a resource plan amendment and associated environmental assessment for the Eagle Crest Pumped Storage Project (ECE project) transmission and water supply lines in Riverside County, California. Eagle Crest Energy Corporation (ECE) has requested a right-of-way (ROW) grant from the BLM to construct approximately 12 miles of transmission and gen-tie line for the transmission of energy associated with the project. The National Park Service (NPS) appreciates the opportunity to comment.

**Evaluate cumulative actions of proposed land management actions**

There are two land management actions that should be considered in assessing cumulative impacts as a result of this ROW authorization. First, the NPS is currently conducting a Boundary Study and has proposed segregation and withdrawal of federal lands surrounding the proposed project. The results of this Boundary Study and the segregation could affect management of some of the public lands underlying the rights-of-way, either in the near or long-term future. This also affects the management of federal lands adjacent to the ROW ECE is seeking, if the lands are transferred to NPS as a result of the Boundary Study.

Second, the BLM has recently released the final California Desert Renewable Energy Conservation Plan (DRECP). In this plan, lands to the west of ECE project and ROW are identified as National Conservation Lands of national significance. In addition, Areas of Critical Environmental Concern, of regional significance, are identified north, south, and east of the project, including areas that the ROWs would traverse.

**Re-evaluate level of compliance needed for this rights-of-way project**

The NPS suggests that the compliance document be changed from an Environmental Assessment (EA) to an Environmental Impact Statement (EIS). The ECE project has generated substantial controversy. It is anticipated that this linked project will also generate controversy and public comments. If the intent for this document is to determine if there will be significant effects resulting from a Federal action and to capture likely anticipated comments which will likely direct National Environmental Policy Act (NEPA) compliance towards an EIS, then the NPS supports this approach. If the initial analysis has been

completed that the Federal action are not anticipated to have a significant effect on the human environment and an EA was going to be completed to document this, then the NPS considers this is pre-determined and urges an approach where the impacts of the Federal action can be fully analyzed and assessed, and incorporate public review and comment.

### **Evaluate scope of the Rights-of-Way**

When reviewing the current maps of the project boundary and maps of BLM lands, it appears that there is BLM land included as part of the upper reservoir. If this BLM ownership under the reservoir is included under the FERC license, then that is important to clarify in this ROW document that is focused on transmission and water supply lines. If the BLM authorization to ECE to use that land for the reservoir is not included in the FERC license, then this ROW application should be expanded to include those lands. That additional scope of the project might also expand the need for an EIS.

### **Resource topics of concern**

The NPS has concerns that this ROW project will tier off of the controversial 2014 Final EIS prepared by the Federal Energy Regulatory Commission (FERC) for the ECE project. On July 21, 2014, the Department of the Interior filed a request for rehearing on this project. The Department's rehearing petition identified numerous inadequacies in the NEPA process and the EIS for the project. The Department's rehearing petition requested that FERC complete additional NEPA analyses on the project and stay the license and associated deadlines. The FERC denied the rehearing and stay request on October 15, 2015 however the resource issues of concern remain unresolved. We realize that these issues focus on the project itself, rather than the rights-of-way, but we hope that by stating these unresolved resource concerns again, these topics can be given due consideration in this project as they pertain to the rights-of-way and compliance documents.

The NPS encourages the BLM to evaluate pertinent topics from that rehearing and stay request in the ROW assessment. These include:

- bighorn sheep, including maintaining habitats for genetic connectivity;
- birds; and
- water quality issues that will extend from the project site and potentially affect any lands in proximity to the ROWs.

Additional topics that should be considered for particular consideration for the ROWs include:

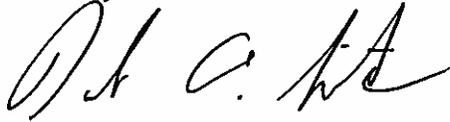
- desert tortoise, especially as pertain to increasing number of avian predators which use transmission lines and whose subsequent increases will result in additional predation on desert tortoise;
- desert tortoise, the proposed path transects through ACEC;
- air quality, especially transmission lines and release of ozone given ozone attainment goals with the Class I airsheds nearby;
- viewshed and minimizing impacts;
- soundscapes and protecting quiet during construction; and
- Wilderness protection.

### **Need for current baseline information**

Baseline data and ground surveys for the ROW should be strong for all resources since the FEIS does not contain current information. We encourage that the EA or EIS include current information for all resources to provide a more adequate picture of the current conditions for the ECE project and the ROWs.

Please contact Superintendent David Smith at 760-367-5502 or [david\\_smith@nps.gov](mailto:david_smith@nps.gov) if you have any additional questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Smith", written in a cursive style.

David Smith  
Superintendent

cc: Martha Lee, Acting Regional Director, NPS Pacific West Region  
Steve Mietz, Acting Deputy Regional Director, NPS Pacific West Region  
Barbara Goodyear, DOI, Office of the Solicitor  
Andrea Compton, Chief of Resources Management, Joshua Tree National Park

Comments for ER Control Number: EQ-15/0100

BriAnna Weldon: bweldon@nps.gov

11/30/2015

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The designated corridor for the Juan Bautista de Anza National Historic Trail may coincide with the proposed project area. The Anza Trail historic corridor, recreation retracement route, and auto route are within the Santa Rosa Mountains and San Bernardino National Forest then travels northwest through the Moreno Valley into Riverside, which seems to be the west of the project area. However, coordination should be conducted with the Juan Bautista de Anza National Historic Trail - National Park Service to ensure that impacts are properly identified and disclosed and that appropriate mitigation is proposed if necessary and if the project area overlaps with the Anza Trail.



## Basin and Range Watch

December 28, 2015

Greg Miller

Deputy District Manager

BLM-CDD

22835 Calle San Juan de Los Lagos,

Moreno Valley, CA 92553

[blm\\_ca\\_eagle\\_mountain\\_pumped\\_storage\\_project@blm.gov](mailto:blm_ca_eagle_mountain_pumped_storage_project@blm.gov)

[gmillers@blm.gov](mailto:gmillers@blm.gov)

RE: Comments on the Notice of Intent (“NOI”) to amend the Resource

Management Plan for the California Desert Conservation Area and Prepare an

Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California

Dear Mr. Miller,

Basin and Range Watch is a group of volunteers who live in the deserts of Nevada and California, working to stop the destruction of our desert homeland. Industrial renewable energy companies are seeking to develop millions of acres of unspoiled habitat in our region.

We have visited the Eagle Mountain area and are concerned that the pumped storage project will result in more industrial development in the region next to Joshua Tree National Park, a popular visitor destination in the California desert.

The project and Environmental Assessment will enable direct impacts to be inflicted upon the resources and people living in the region. The cumulative scenario of the proposed Environmental Assessment (EA) would lead to a very large project that will impact groundwater, people, Joshua Tree National Park and wildlife. For this reason, we request that this project be reviewed with a full Environmental Impact Statement. Under the National Environmental Policy Act, *“the cumulative effects analysis considers*

*past, present, and reasonably foreseeable future actions that would affect the resource of concern within the geographic scope and the timeframe of the analysis. In your analysis, you must consider other BLM actions, other Federal actions, and non-Federal (including private) actions (40 CFR 1508.7)”.*

Large approved solar projects in the Chuckwalla Valley have created groundwater pumping issues, wildlife impact, fugitive dust, cultural resource damage problems and a whole list of other impacts that mitigation requirements have not resolved. Past, present and reasonably foreseeable actions include:

Past: The Eagle Mountain Mine and the Desert Sunlight Solar Project. Both had had great impacts on the resources of the region.

Present: The Desert Sunlight Project continues to harm avian wildlife and has altered the local hydrology. The Genesis, Blythe and McCoy Projects collectively are damaging about 12,000 acres no matter if they are completed or not.

Reasonably foreseeable future actions: The region is adjacent to the largest Solar Energy Zone in the US. The East Riverside SEZ has approved energy sprawl on 149,000 acres of public land in the Chuckwalla and surrounding basins. The impacts to biological resources, cultural resources and landscapes, hydrology, National Parks and Wilderness, hydrology, property rights and a whole list of other issues are imminent. For this reason, BLM has it in their authority to review this with a full EIS.

The Purpose and Need Statement for the EIS should focus on protecting the region's resources from the cumulative impacts of the Eagle Crest Pumped Storage Project. The impacts of the project combined with the recent land rush of energy projects should be fully analyzed.

Pending projects that appear to be sticking around in the region are:

1. Palen, now a photovoltaic project. It is likely that 3,000 acres will be developed for this.
2. Desert Quartzite west of Blythe, a PV project of about 4,800 acres.
3. Desert Harvest just south of Desert Sunlight. Approved but still seeking a Power Purchase Agreement.
4. The Golden Sun Wind Project would be a massive impact near the Chuckwalla Bench.

Alternatives: Because there is no Environmentally friendly way to approve the Eagle Crest Pumped Storage Project, the BLM should adopt a No Action Alternative for this EA. A No Action Alternative can be justified through:

Distributed Generation

Energy efficiency

Battery Storage

All of these have great future potential and make the need for such a resource intensive project minimal. The BLM's EA will only enable all of the damage.

- The California Desert Conservation Area (CDACA) is an enormously important, diverse, and beautiful area, and should be managed with great care as to environmental review for any developments, especially those next to a national park. The Bureau of Land Management must conform to the land use planning of FLPMA, as well as of NEPA. This must include public participation. The Eagle Crest Pumped Storage Project will violate FLPMA standards protecting groundwater and sensitive wildlife. BLM needs to conduct a full Environmental Impact Statement (EIS) and not simply a short Environmental Assessment.
- The impacts from the proposed pumped storage project on water resources and desert habitats were not adequately assessed in the earlier EIS for the proposed pumped storage project alone (which was improperly segmented). Therefore, BLM must consider the whole of the project, the ROW and the proposed pump storage project, in a new EIS. Since the original EIS is 17 years old, a new EIS should be prepared. Not an EA. Much has changed in 17 years including the cumulative impacts from large-scale renewable energy projects like Desert Sunlight Solar Farm and Genesis Solar Energy Project.
- Groundwater is a huge concern in the desert, especially during this historic California drought. The Eagle Crest Pumped Storage Project proposes to consume over 1,500 acre feet of water in make up water every year. BLM needs to direct EagleCrest to begin monitoring of wells in the community of Desert Center, local farms, and the surrounding area immediately to provide a baseline, and continue monitoring on a quarterly basis for the life of the project. This is important to the economy and livelihood of local residents in Chuckwalla Valley who have lived and worked in the area long before large-scale energy projects and developments came to the area. BLM should set up a monitoring protocol to qualitatively and quantitatively measure any die-off of microphyll woodland in the area, in case groundwater pumping by the project lowers the water table below the roots of native desert trees such as ironwood and mesquite. As we have commented in past letters on this area to BLM, the groundwater here is actually fossil water as discovered by water chemistry research, and so little recharge is occurring. Any waste of groundwater could be devastating to the region.
- Biological Resources are rich and varied in the Chuckwalla valley and surrounding mountain ranges, with many sensitive species and ecologically sensitive areas. Species include the federally and state threatened desert tortoise which is documented to occur in the area as well as the federally and state endangered Yuma Ridgway's rail and migratory birds. Because the proposed project has potential to significantly affect these protected species, BLM should write an Environmental Impact Statement, and cannot rely on an Environmental Assessment. There will need to be studies for desert tortoise, bighorn sheep, burro deer, kit fox, Yuma Mountain lion, rare plants, migratory birds, LeConte's thrasher, golden eagles, as well as connectivity corridors for wildlife. How can mitigation measures be in place for animals and plant communities the BLM has not even studied much less recognize as existing? An EIS would be

needed. For desert tortoise, a cumulative impact analysis must be performed. If all of the projects proposed in the Chuckwalla Valley are given a No Jeopardy decision from US Fish & Wildlife Service with “take permits,” tortoise will be significantly impacted. An artificial lake environment in the desert will also attract waterbirds, with unknown impacts that need to be studied and mitigated. Will these new artificial lakes attract waterbirds that will also be attracted to the photovoltaic panels of nearby solar projects, leading to bird impacts on panels and increased mortality? This needs to be analyzed in an EIS. We request that detailed seasonal surveys be performed for sensitive plant species and vegetation communities, and animal species, including migratory bird activity, under the direction and supervision of the BLM and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife before any analysis is undertaken as part of the NEPA process. Full disclosure of survey methods and results to the public and other agencies without limitations imposed by the applicant must be implemented to assure full NEPA/ESA compliance.

- The Environmental Justice element must be analyzed in the EIS for the small communities of Eagle Mountain, Desert Center, and Lake Tamarisk.
- New transmission lines will have impacts that also need to be analyzed fully, and not segmented off as separate from the pumped storage project.
- A reasonable range of alternatives should be considered. BLM needs to examine alternatives that lie outside of the jurisdiction of the Bureau of Land Management as outlined in NEPA based on what the intentions for the exchanged land are. This needs to be done because the cumulative impacts of a development project will impact too many other resources. The NEPA Handbook also states: *“You must describe direct, indirect, and cumulative impacts of each alternative (40 CFR 1508.25(c))”*. Alternatives of different locations, and different storage technologies, should be considered. The BLM should consider an alternative of working with a conservation group like the Mojave Land Trust to purchase the land for conservation reasons.

**Conclusion:**

The BLM should be evaluating the best possible use for this land. Given all of the development that the region as seen, we believe these lands need to go to Joshua Tree National Park.

Thank you,

Kevin Emmerich

Laura Cunningham

Basin and Range Watch

P.O. Box 70

Beatty, NV 89003



*protecting and restoring natural ecosystems and imperiled species through  
science, education, policy, and environmental law  
via electronic mail, website and USPS*

12/24/2015

Greg Miller  
Deputy District Manager  
BLM-CDD  
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[BLM\\_Eagle\\_Crest\\_Energy\\_Gen\\_Tie\\_ROW@blm.gov](mailto:BLM_Eagle_Crest_Energy_Gen_Tie_ROW@blm.gov)  
[gmiller@blm.gov](mailto:gmill@blm.gov)

**RE: Comments on the Notice of Intent (“NOI”) to amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California**

Dear Greg Miller,

Please accept the Center for Biological Diversity’s comments on the Notice of Intent (“NOI”) to amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California, in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended regarding the potential impacts of the proposed project. 80 Fed. Reg. 73815 (Nov. 25, 2015). These comments are timely filed. *Id.*

The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. These scoping comments are submitted on behalf of the Center’s 900,000 staff, members and online activists throughout California and the western United States many of whom live in southern California and enjoy visiting, studying, photographing and hiking in the California Desert Conservation Area, including the Chuckwalla Valley.

The Eagle Crest Pumped Storage Project has applied to the BLM for a right-of-way (ROW) grant to construct, operate, maintain and decommission a 500 kilovolt (kV) generation interconnect (gen-tie) line and a water pipeline in support of a proposed pumped storage project. The ROW area encompasses approximately 676 acres of public land. The Center urges the BLM to reject the ROW application because this ill conceived proposed pump storage project would undermine existing conservation investments and destroy key habitats in the Chuckwalla Valley and Joshua Tree National Park.

The site of the proposed project is currently surrounded on three sides by Joshua Tree National Park and the location was originally part of Joshua Tree National Monument. The Center and other conservation groups have long advocated for these lands to be re-annexed back into the Park boundaries and the National Park Service is currently studying a Park Service boundary adjustment in this very area.<sup>1</sup> That ongoing process must be coordinated with this BLM NEPA process as both proposals concern the same lands and resources. The Center's initial comments on the Park Service Boundary Study are incorporated by reference here and attached to this submission (Attachment 1).

This proposed project requires a land use plan amendment to the 1980 California Desert Conservation Area (CDCA) Plan, as amended. The Energy Production and Utility Corridors section of the California Desert Conservation Area Plan (1980) as amended requires at minimum that the following resource issues be addressed:

- 1) Consistency with the Desert Plan, including designated and proposed planning corridors;
- 2) Protection of air quality;
- 3) Impact on adjacent wilderness and sensitive resources;
- 4) Visual quality;
- 5) Water source(s);
- 6) Waste disposal;
- 7) Seismic hazards; and
- 8) Regional equity.

Based on our review there is a high potential that many rare plants and animals may be adversely affected by the proposed pump storage project and the proposed ROW. The species and habitats include the federally and state threatened desert tortoise which is documented to occur in the area as well as the federally and state endangered Yuma Ridgway's rail and migratory birds. Because the proposed project has potential to significantly affect these protected species and habitats, the BLM should produce an Environmental Impact Statement, and cannot rely on an Environmental Assessment. Further, the impacts from the proposed pump storage project on water resources and habitats were not adequately assessed in the earlier EIS for the proposed pump storage project alone (which was improperly segmented as well). (*See* Center Comments dated August 28, 2011 on FERC EIS – Attachment 2). Therefore, BLM must consider the whole of the project, the ROW and the proposed pump storage project, in a new EIS.

Additionally, as detailed below, a number of other resources may be significantly affected by the proposed project as a whole and must be addressed in detail in an EIS:

### **Biological Resources**

Based on the very general project description in the NOI, it appears that this site is proposed on an ecologically functional desert landscape that may host a suite of rare species. Careful documentation of the current site resources is imperative in order to analyze how best to site the project to avoid and minimize impacts and then to mitigate any unavoidable impacts.

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<sup>1</sup> <http://www.nps.gov/jotr/learn/news/boundarystudyeaglemountain.htm>

## ***Biological Surveys and Mapping***

The Center requests that thorough, seasonal surveys be performed for sensitive plant species and vegetation communities, and animal species, including migratory bird activity, under the direction and supervision of the BLM and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife before any analysis is undertaken as part of the NEPA process. Full disclosure of survey methods and results to the public and other agencies without limitations imposed by the applicant must be implemented to assure full NEPA/ESA compliance.

Confidentiality agreements should not be allowed for the surveys in support of the proposed project. Surveys for the plants and plant communities should follow California Native Plant Society (CNPS) and California Department of Fish and Wildlife (CDFW) floristic survey guidelines<sup>2</sup> and should be documented as recommended by CNPS<sup>3</sup> and California Botanical Society policy guidelines. A full floral inventory of all species encountered needs to be documented and included in the EIS. Surveys for animals should include an evaluation of the California Wildlife Habitat Relationship System's (CWHR) Habitat Classification Scheme. All rare species (plants or animals) need to be documented with a California Natural Diversity Data Base form and submitted to the California Department of Fish and Game using the CNDDDB Form<sup>4</sup> as per the State's instructions<sup>5</sup>.

The Center requests that the vegetation maps be at a large enough scale to be useful for evaluating the impacts. Vegetation/wash habitat mapping should be at such a scale to provide an accurate accounting of wash areas and adjacent habitat types that will be directly or indirectly affected by the proposed activities. A half-acre minimum mapping unit size is recommended, such as has been used for other development projects. Habitat classification should follow CNPS' Manual of California Vegetation (Sawyer et. al. 2009).

Adequate surveys must be implemented, not just a single season of surveys, in order to evaluate the existing on-site conditions. Due to unpredictable precipitation, desert organisms have evolved to survive in these harsh conditions and if surveys are performed at inappropriate times or year or in particularly dry years many plants that are in fact on-site may not be apparent during surveys (ex. annual and herbaceous perennial plants).

## ***Impact Analysis***

The EIS must evaluate all direct, indirect, and cumulative impacts to sensitive habitats, including impacts associated with the proposed pump storage project itself and any potential for

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<sup>2</sup> <http://www.cnps.org/cnps/rareplants/inventory/guidelines.php> and [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols\\_for\\_Surveying\\_and\\_Evaluating\\_Impacts.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf)

<sup>3</sup> <http://www.cnps.org/cnps/archive/collecting.php>

<sup>4</sup> [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf)

<sup>5</sup> [http://www.dfg.ca.gov/biogeodata/cnddb/submitting\\_data\\_to\\_cnddb.asp](http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp)

establishment of unpermitted recreational activities, the introduction of non-native plants, the introduction of lighting, noise, and the loss and disruption of essential habitat due to edge effects.

A number of rare resources have high potential to occur on the proposed project and ROW sites including:

<i>Common Name</i>	<i>Scientific Name</i>	<i>State/Federal/Other Status</i>
Desert Tortoise	<i>Gopherus agassizii</i>	CT/FT
Yuma Ridgway's rail	<i>Rallus obsoletus yumanensis</i>	CE/FE/FP
Mojave fringe-toed lizard	<i>Uma scoparia</i>	CSC
Burrowing owl	<i>Athene cunicularia hypugaea</i>	CSC/BLM SS
LeConte's thrasher	<i>Toxostoma lecontei</i>	CSC
Bendire's thrasher	<i>Toxostoma bendirei</i>	CSC
Loggerhead shrike	<i>Lanius ludovicianus</i>	CSC/FSC/MB
Prairie falcon	<i>Falco mexicanus</i>	CSC/MB
Nelson's bighorn sheep	<i>Ovis canadensis nelsonii</i>	Game species
Las Animas colubrine	<i>Colubrina californica</i>	CNPS List 2.3
Coves' cassia	<i>Cassia covesii</i>	CNPS List 2.2
Harwood's milkvetch	<i>Astragalus insularis</i> var. <i>harwoodii</i>	CNPS List 2.2
California ayenia	<i>Ayenia compacta</i>	CNPS List 2.3
Alverson's foxtail cactus	<i>Coryphantha alversonii</i>	CNPS List 4.3
California ditaxis	<i>Ditaxis serrata</i> var. <i>californica</i>	CNPS List 3.2
Coachella Valley Milkvetch	<i>Astragalus lentiginosus</i> var. <i>coachellae</i>	FE/CNPS 1.2/BLM SS
<p><b>State Designation</b>            CE State listed as endangered.            CT State listed as threatened. Species that although not presently threatened in California with extinction are likely to become endangered in the foreseeable future.            FP Fully protected species under State            CSC California Department of Fish and Game "Species of Special Concern." Species with declining populations in California.</p> <p><b>Federal Designation</b>            FE Federally listed as endangered.            FT Federally listed as threatened.            MB Migratory Bird Treaty Act. of 1918. Protects native birds, eggs, and their nests.            BCC U.S. Fish and Wildlife Service Bird of Conservation Concern.            BLM SS BLM Sensitive Species.</p> <p><b>Other</b>            California Native Plant Society (CNPS)            1B.1 Plant rare, threatened or endangered in California and elsewhere, and very threatened.            2.2 Plant rare, threatened or endangered in California, but more common elsewhere, and fairly threatened in CA.            2.3 Plant rare, threatened or endangered in California, but more common elsewhere, and not very threatened in CA.            4.3 Plants of a limited distribution, and not very threatened in CA.</p>		

All of these species have been identified as occurring in the general vicinity of the project site.<sup>6</sup> Therefore, the EIS must adequately address the impacts and propose effective ways to avoid, minimize, and mitigate the impacts to these resources through alternatives including alternative siting and alternative on-site configurations.

<sup>6</sup> CNDDDB 2015 <http://www.dfg.ca.gov/biogeodata/cnddb/mapsanddata.asp>

## *Desert Tortoise*

The desert tortoise is continuing to decline throughout its range despite being under federal and state Endangered Species Acts protection as threatened<sup>7</sup>. It is unclear if the proposed Eagle Crest Pumped Storage Project ROW, is within the desert wildlife management area (DWMAs) as identified in the Northern and Eastern Colorado Plan<sup>8</sup> or within the Wildlife Habitat Management Area (WHMA), but regardless it will likely have desert tortoise occurring on site, because tortoises are known to occur both within and outside the DWMA. Moreover, the proposed project as a whole could have significant impacts to desert tortoise populations throughout the area as the open water areas would attract significant additional predators including ravens and coyotes. Increasing predation pressure on a population already in decline is likely to undermine both survival and recovery of the tortoise in this area. The EIS must clearly address alternative proposals for avoiding, minimizing and mitigating the impacts to the desert tortoise and any occupied habitat including rejecting the proposed ROW.

The BLM must first look at ways to avoid impacts to the desert tortoise, for example, by identifying and analyzing the benefits of rejecting the ROW application. The BLM should also consider whether alternative energy storage proposals would avoid all of the proposed projects impacts without undermining existing conservation investments in the Park and on public lands. BLM must also consider *alternative sites* for the ROW outside of desert tortoise occupied habitat or in areas that have already been severely disturbed by other prior land use as well as alternative project configurations that would avoid or significantly reduce impacts.

After considering alternatives that could avoid the impacts of the proposed project as a whole, the BLM must also look at ways to minimize any impacts that it finds are unavoidable, for example, by limiting the ground disturbing activities from the project and limiting access roads to the project. Acquisition of lands that will be managed in perpetuity for conservation must be included as part of the strategy to mitigate impacts to the tortoise, mitigation lands should also be high-quality habitat and, at minimum 5:1 mitigation should be provided of all acres of desert tortoise habitat destroyed. Set-aside conservation lands are particularly important because the project as proposed appears to have little or no compatibility with on-site conservation for desert tortoise.

Translocation as a long-term strategy for minimizing and mitigating impacts to desert tortoise may be a tool for augmenting conservation of the desert tortoise<sup>9</sup>, but it cannot substitute for other mitigation such as preservation of habitat. Moreover, to date, translocation does not have a proven track record of success. If translocation (for any species) is to be a part of the mitigation strategy, a detailed final plan must be included as apart of the EIS, and include methodologies for determining appropriate conservation area where tortoises may be translocated, impacts to existing “host” tortoise populations that occur on the translocation site,

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<sup>7</sup> USFWS 2014 [http://www.fws.gov/nevada/desert\\_tortoise/documents/misc/status-desert-tortoise.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/misc/status-desert-tortoise.pdf)

<sup>8</sup> BLM 2006 <http://www.blm.gov/ca/st/en/fo/cdd/neco.html>

<sup>9</sup> Field et al 2007

when/how the tortoise are to be translocated, how tortoise diseases will be addressed, and requisite monitoring of host and translocated tortoises, etc.. Monitoring of the translocated and existing “host” tortoises needs to occur for a long enough time period that is realistic to evaluate success of the translocation –10 years may be a more realistic minimum for tracking impacts to this long lived species. Success criteria for translocation must also be clearly identified. Any temporary project site needs to be fenced with tortoise proof fencing during construction and the permanent project sites need to be fenced to prevent tortoise mortality. All associated roads also need to be fenced.

An aggressive raven prevention plan also needs to be developed as part of the EIS and followed during project development and implementation.

### ***Yuma Ridgway’s Rail***

The proposed project and ROW is also within a known movement corridor for the federally and state endangered Yuma Ridgway’s rail between the Salton Sea and the Colorado River. A Yuma Ridgway’s rail mortality was documented at the adjacent Desert Sunlight solar project in 2013<sup>10</sup>. In BLM’s Final Land Use Plan Amendments for the DRECP, the proposed project and ROW area is evaluated to have a high probability of collision with transmission lines for Yuma Ridgway’s rail among other sensitive species, including “western yellow-billed cuckoo, Yuma Ridgway’s rail, mountain plover, southwest willow flycatcher, and burrowing owl” (DRECP LUPA at IV.7-156). In addition the proposed project with its two open water bodies are likely to attract Yuma Ridgway’s rail to the area, luring them into harm’s way. The DEIS must fully analyze the potential impacts to this highly imperiled bird.

### ***Burrowing Owl***

Burrowing owls are continuing to decline in California. If burrowing owls are identified on the site, at least one alternative should evaluate the reduction of impacts to this rare species by moving the project away from the nesting burrows. Additionally, acquisition lands may be required as part of the mitigation and will need to be managed in perpetuity for conservation. Mitigation lands should be high-quality habitat and, at minimum 5:1 mitigation should be provided of all acres of burrowing owl habitat destroyed. Additional measures for avoidance and minimization should also be incorporated into the evaluation of impacts to this species.

### ***Other Rare Species***

The diversity of rare species found across the landscape near the proposed Eagle Crest Pumped Storage project ROW site is impressive and suggests that the proposed project site is part of a larger ecologically intact and functioning unit<sup>11</sup>. The BLM must clearly address proposals for avoiding, minimizing and mitigating the impacts to all of the rare species that utilize the sites for part or all of their lifecycle. In addition to attracting and supporting predators such as ravens and coyotes, the open waters of the propose project could become an attractive

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<sup>10</sup> <http://www.scientificamerican.com/article/solar-farms-threaten-birds/>

<sup>11</sup> CNDDDB 2015 <http://www.dfg.ca.gov/biogeodata/cnddb/mapsanddata.asp>

trap for migratory birds which could be injured or killed when the pools are drained and pumped repeatedly. BLM should consider rejecting the ROW application because these impacts are unmitigable and will undermine conservation efforts throughout the California deserts.

For the rare plants, avoidance is preferable because of the general lack of success in transplanting rare plants<sup>12</sup>. If transplantation is to be a part of the mitigation strategy, a detailed final plan must be included as part of the EIS on the methodology for determination of appropriate conservation area where plants may be transplanted, when/how plants are to be transplanted and identification of success criteria for transplantation. Monitoring of the transplanted plants needs to occur for a time period that is realistic to evaluate long-term success of the plants.

Acquisition of lands that will be managed in perpetuity for conservation must be included as part of the strategy to minimize and mitigate impacts to the other species found on site as well. Acquisition is particularly important for these species because the proposed project appears to have little compatibility with any type of on-site conservation of plant communities or wildlife.

### ***Locally Rare Species***

The Center requests that the EIS also evaluate the impact of the proposed project on locally rare species (not merely federal- and state-listed threatened and endangered species). The preservation of regional and local scales of genetic diversity is very important to maintaining species in perpetuity especially in light of global climate change. Therefore, we request that all species found at the edge of their ranges or that occur as disjunct locations be evaluated for impacts by the proposed permitted activities. Such species include desert kit fox and American badger among others.

### ***Sand Transport Corridor***

The proposed ROW has potential to be sited on the sand transport corridor that originates in Joshua Tree National Park, through the Palen and Ford Dry Lake Valleys, across Interstate 10 to the agricultural areas adjacent to Blythe. This corridor provides sand habitat for a suite of sand-specialists, including the Mojave fringe-toed lizard that reaches its most southern edge of its range in this area and many unique invertebrates. Avoidance should be the first step, but if impacts to habitat as well as disruption to the sand transport corridor are anticipated they must be identified, minimized and analyzed.

## **Water Resources**

The proposed project as a whole includes significant water pumping from the ancient aquifer underlying the Chuckwalla Valley which was inadequately analyzed in the earlier EIS for the proposed pump storage portion of the project. Currently, the USGS is studying the water

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<sup>12</sup> Fiedler 1991

resources of the Chuckwalla Valley<sup>13</sup>, and the EIS must include the data and analysis resulting from this important new study and evaluate the impacts from the whole project, not just the ROW on these precious desert water resources.

The EIS document must also identify and analyze the impacts to the jurisdictional Waters of U.S., the Colorado River, and the Water of the State of California from the project as a whole due to the groundwater pumping and surface disturbances affecting hydrology and surface waters. Impacts should be avoided to the greatest extent possible including by denying the ROW application. If an action alternative is considered all impacts to groundwater and surface hydrology that cannot be avoided through alternative siting and design must be fully mitigated. In doing so, any reroute of surface waters and drainage on the site must assure that downstream processes are not impacted.

An evaluation of the effect of additional groundwater pumping (in conjunction with other groundwater issues [pumping, nitrate plume etc.] in the basin) on the water quality in the basin and surface water resources, and its effect on water availability for the native plant and animal species and their habitats needs to be included in the EIS.

### **Alternatives**

The EIS must include a robust analysis of alternatives, including a no action alternative that denies the application for a ROW due to significant and unmitigable impacts from the proposed project as a whole on desert resources including Joshua Tree National Park and other public lands. The EIS must also consider a private lands alternative and alternatives that eliminate impacts to wildlife through subsurface transmission lines. The stated objectives of the proposed project must not unreasonably constrain the range of feasible alternatives evaluated in the EIS. The BLM must establish an independent set of objectives that do not unreasonably limit the EIS's analysis of feasible alternatives including alternative sites and alternative methods of storing energy.

### **Other Issues**

The construction and operation of the proposed facilities will also increase greenhouse gas emissions and those emissions should be quantified and off-set. This would include the manufacture and shipping of components of the project and the car and truck trips associated with construction and operations, open water storage at the pits, etc. Similarly, such activities will also impact air quality and traffic in the area and these impacts should be disclosed, minimized and mitigated as well. For mobile sources, since consistency with the AQMP will not necessarily achieve the maximum feasible reduction in mobile source greenhouse emissions, the EIS should evaluate specific mitigation measures to reduce greenhouse emissions from mobile sources.

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<sup>13</sup> <http://ca.water.usgs.gov/projects/2011-23.html>

### ***Non-Native Plants***

The EIS must identify and evaluate impacts to species and ecosystems from invasive exotics plant species. Many of these species invade disturbed areas, and then spread into wildlands. Fragmentation of intact, ecologically functioning communities further aides the spread and degradation of plant communities<sup>14</sup>. These factors for wildland weed invasions are present in the project, and their effect must be evaluated in the EIS.

### ***Subsidized Predators***

As noted above, the proposed project as a whole would also subsidize predator species such as ravens and coyotes that could devastate local native populations of tortoise and other wildlife. The EIS must identify and analyze this threat to biological resources and consider avoidance measures to support survival and recovery of tortoise and other native species.

### ***Wildlife Movement***

Because the proposed project site for the ROW portion of the project is likely located within an identified California Essential Habitat Connectivity corridor<sup>15</sup>, a thorough and independent evaluation of the project's impacts on wildlife movement is essential. The EIS must evaluate all direct, indirect, and cumulative impacts to wildlife movement corridors. The analysis should cover movement of large mammals, as well as other taxonomic groups, including small mammals, birds, reptiles, amphibians, invertebrates, and vegetation communities. The EIS should first evaluate habitat suitability within the analysis window for multiple species, including all listed and sensitive species. The habitat suitability maps generated for each species should then be used to evaluate the size of suitable habitat patches in relation to the species average territory size to determine the appropriate size and location of linkages and that they provide both live-in and move-through habitat. The analyses should also evaluate if suitable habitat patches are within the dispersal distance of each species. The EIS should address both individual and intergenerational movement (i.e., will the linkages support metapopulations of smaller, less vagile species). The EIS should identify which species would potentially utilize the proposed wildlife movement corridors under baseline conditions and after construction, and for which species they would not. In addition, the EIS should consider how wildlife movement will be affected by other planned approved, planned, and proposed development in the region as part of the cumulative impacts.

The EIS should analyze the habitat fragmentation of the construction and maintenance of these linear structures and their effects on wildlife. The EIS should also evaluate whether the proposed wildlife movement corridors would provide key resources for species, such as host plants, pollinators, or other elements. For example, many species commonly found in washes depend on upland habitats during some portion of their cycle. Therefore, in areas with intermittent or perennial streams, upland habitat protection is needed for these species. Upland habitat protection is also necessary to prevent the degradation of aquatic habitat quality.

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<sup>14</sup> Bossard et al 2000

<sup>15</sup> <http://bios.dfg.ca.gov/>

## Cumulative Impacts

Because of the number of currently permitted and proposed projects in vicinity, the region, and the CDCA, a thorough analysis of the cumulative impacts from all of these projects on the resources along with the whole of the proposed pump storage project and proposed ROW needs to be included in the EIS. To date several projects have been permitted and in some cases built in the general vicinity and affect many of the same resources including groundwater and surface hydrology. These projects include the Desert Sunlight project, the Genesis project, Blythe project, McCoy project, and Desert Harvest project. Other projects are proposed, including the Palen project and Desert Quartzsite. Additionally numerous other applications are included in the area. While many of these projects lie within the Solar Energy Zone identified in the Solar PEIS that document did not look at specific cumulative impacts from the proposed pump storage or even build-out of all of the solar projects. Therefore, this EIS must evaluate if the cumulative impact from the proposed project as a whole along with other projects that will cause significant unmitigable impacts not only within the SEZ but to the surrounding resources including Joshua Tree National Park as well as BLM identified Areas of Critical Environmental Concern (ACECs), Wildlife Habitat Management Areas (WHMAs), proposed NCL units, and federally designated Wilderness.

Thank you for your consideration of these comments. Please add us to the distribution list for the EIS and all notices associated with this project.

Sincerely,



Heene Anderson  
Biologist/Public Lands Desert Director  
Center for Biological Diversity

### Attachments:

1. Center Comments on Eagle Mountain Boundary Study.
2. Center Comments on the Draft Environmental Impact Statement for Hydropower License - Eagle Mountain Pumped Storage Hydroelectric Project—FERC Project No. 13123-002 California.

cc via email

Brian Croft, USFWS, [Brian\\_Croft@fws.gov](mailto:Brian_Croft@fws.gov)  
Kevin Hunting, CDFG [KHunting@dfg.ca.gov](mailto:KHunting@dfg.ca.gov)  
Tom Plenys, EPA, [Plenys.Thomas@epa.gov](mailto:Plenys.Thomas@epa.gov)

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**submitted via email and USPS**

8/21/2015

David Smith, Superintendent  
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**RE: Eagle Mountain Boundary Study**

Dear Superintendent Smith,

These comments are submitted on behalf of the 900,000 members and on-line activists of the Center for Biological Diversity. Joshua Tree National Park preserves the incredible biological diversity and ecotone area that includes part of the Colorado Desert and the Mojave Desert. Its establishment as a National Monument in 1936 recognized the area's uniqueness and diversity early on in our nation's history of strong conservation. At a minimum, the current Boundary Study proposal needs to re-annex all of the area adjacent to Eagle Mountain and re-establish the original boundary of the National Monument as the Park's new boundary for all of the reasons described below. Indeed we believe that further expansions of the Park into the Chuckwalla Valley should be considered to help to protect the precious resources of the Park, including groundwater, from further diminishment. Therefore we request that study alternatives also include at least one alternative proposal to expand the Park outside of the original National Monument boundaries to the east.

Our staff is very familiar with the area east of the Park including the Eagle Mountain area from working on numerous development proposals in the area. Regarding the four questions posed by the study notice, we submit the following comments:

**Question 1:**

*Among the many factors that the National Park Service will consider in evaluating the criteria and options for a proposed boundary adjustment are public access and the need for the protection of resources associated with the park's purpose. What information should we consider in further investigating these topics? Your knowledge of these lands will help inform the evaluation.*

As mentioned above, Joshua Tree National Park sits at the convergence of two unique desert systems – the Colorado and Mojave Deserts. This convergence results in increased biodiversity, Arizona • California • Nevada • New Mexico • Alaska • Oregon • Washington • Illinois • Minnesota • Vermont • Washington, DC

unique habitats and plant communities, and provides a unique evolutionary laboratory for change that will be especially important to study as we consider the consequences of climate change. Maintaining the landscape level integrity of these ecosystems facilitates maintaining existing biological resources and allowing novel systems to develop into the future.

Of great interest to us is the preservation of several unique landscape-level dynamic processes that require protection of additional lands to the east of the original park boundaries in the Chuckwalla Valley. The underground aquifers in the Chuckwalla Valley are under imminent threat of destruction from over-pumping from a variety of developments, but primarily from the Eagle Crest pumped storage proposal, which would be developed in the pits of the former Eagle Mountain steel mine. Maintaining the ancient aquifers in the Chuckwalla Valley is key to maintaining the springs and seeps in this very arid part of California's deserts including within the existing National Park boundaries.

In addition, a landscape level sand transport corridor which originates in the Park's Pinto Basin extends through the Chuckwalla Valley and onto the outskirts of Blythe, where it is stopped at the agricultural development in the Palo Verde Valley. This "river of sand" provides crucial habitat for a variety of unique species, including the most southern population of the Mojave fringe-toed lizard and a suite of unique invertebrates. Preserving not only the sand source, but a majority of this transport corridor is key in retaining the integrity of this naturally rare and now impacted system and the habitat it provides to endemic species.

The Chuckwalla Valley also appears to be a key avian migration corridor thread for the Pacific flyway and the Salton Sea-Colorado River corridor based on survey data that the U.S. Fish and Wildlife has been collecting from projects and other sources. Obviously, the name of the study area – Eagle Mountain – indicates the importance of the area for desert golden eagles, a declining species that have long used this area for successful reproduction. Expanding the park boundary and increasing conservation will help to maintain the existing eagle populations and re-establish the historic eagle territories.

The study area is key habitat for desert bighorn sheep, providing some of the rugged, rocky habitat that is crucial for lambing areas. The lower bajada also needs to be included in the study area, because these lower elevation areas are crucial to bighorn during the late winter and early spring, when the "green-up" of forage (i.e. growth of plants) is occurring only at the lower elevations.

For the declining and federally threatened desert tortoise, the area of the Chuckwalla Valley just downslope of Eagle Mountain and the Pinto wash area, is valuable habitat. While the area southeast of Eagle Mountain is federally designated critical habitat, the remaining lands have no such designation and tortoises in this area have sustained impacts from being translocated out of project areas. The federally designated critical habitat and undesignated habitat would benefit from Park Service management which would also preclude additional development in these sensitive areas.

The area is rich in cultural resources and the traditional landscapes that the Eagle Mountain and Chuckwalla Valley provides the local tribes is crucial for them to retain their cultural traditions and heritage. Conserving this important area with access for tribal traditions needs to be incorporated into the analysis.

Protecting the proposed expansion areas and additional areas in the Chuckwalla Valley through Park expansion and management would not only benefit the plants, animals, habitat and ecological processes, but would provide another opportunity for stellar wildlife watching, enjoyment of desert landscapes, adventure and quiet contemplation for visitors.

**Question 2:**

*Of the various options presented in the newsletter, which one(s) do think would be most appropriate? Are there other options that you think the NPS should consider?*

We believe of the options in the newsletter, the maximum 28,000 acre re-annexation would be most appropriate of the options presented. However, those options are too constrained to maintain the resources of the existing Park unit. We urge the Park to expand the study to include area mentioned above – Chuckwalla Valley, the sand transport corridor, eagle and migratory bird habitat.

**Question 3:**

*What resources in the area do you think are most important? Why?*

All for the resources of these lands are important, as discussed above under question 1. These include but are not limited to: surface and water resources; wildlife habitat; rare plant communities; sand habitats, sand source and sand transport corridors; and cultural resources.

**Question 4:**

*Are there other specific areas of concern that the National Park Service should be aware of?*

As explained under question 1, we urge the Park Service to expand the study area further to the east into the Chuckwalla Valley.

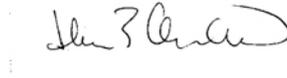
In addition to our responses above to the four questions, we want to re-emphasize that a comprehensive study should include a larger area encompassing additional critical ecological resources and processes that will help to protect the existing Park from degrading activities especially on the east side of the Park. We request that the Park Service expand the study to include the areas and resources discussed above.

Thank you for initiating this action for study, and please feel free to contact us with any questions.

Sincerely,



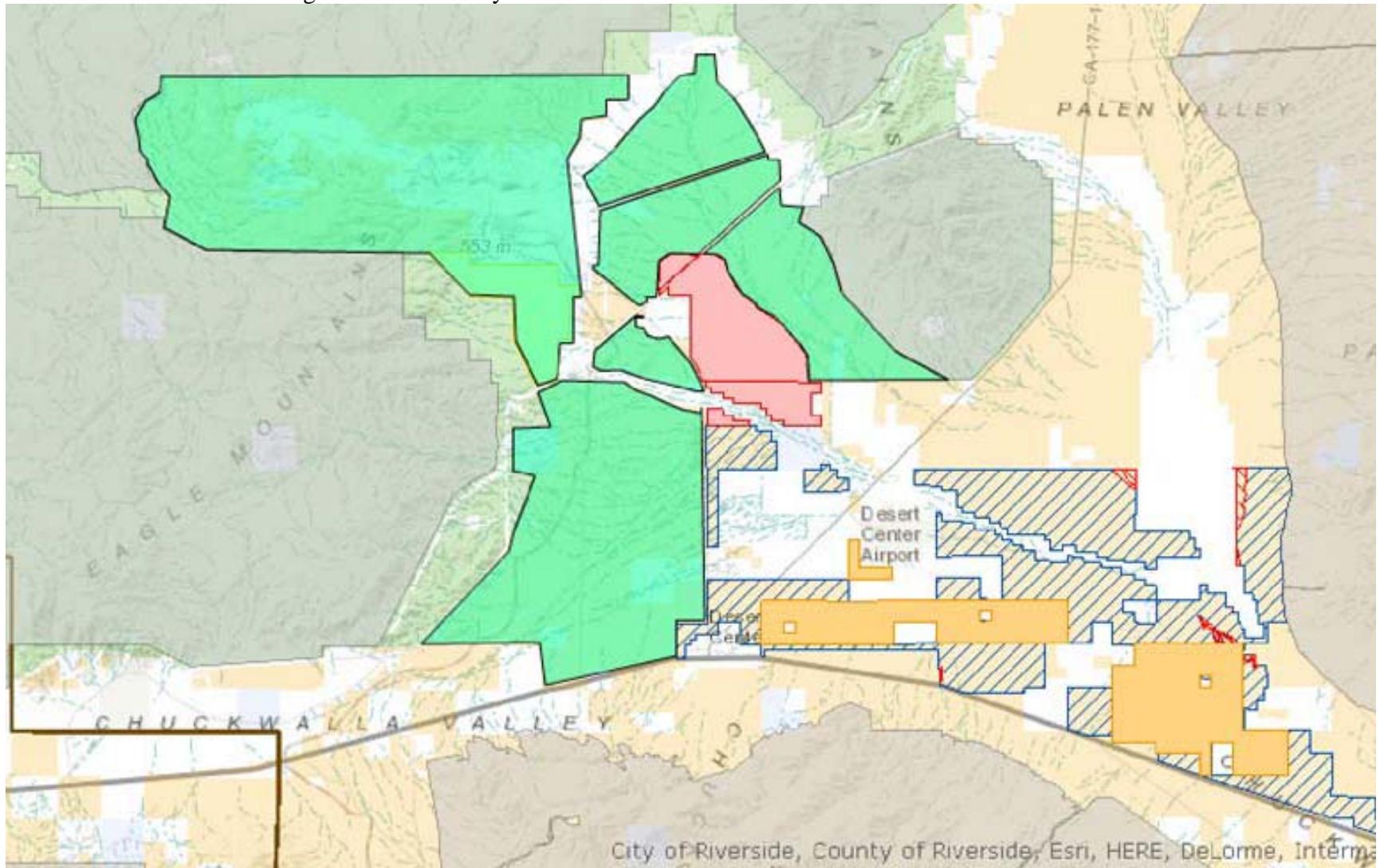
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Attachement: 1 - Alternative Eagle Mountain Study Area

Attachment 1: Alternative Eagle Mountain Study Area



- Proposed Study Area
- Permitted/Constructed Projects
- BLM designated Solar Energy Zone
- Proposed Project
- BLM designated "no build" areas within SEZ

- Public Lands Managed by BLM
- Public Lands Managed by the Park Service
- Federally Designated Wilderness
- Private Lands



***Submitted at FERC website, sent by electronic mail and Fed Ex***

February 28, 2011

Kenneth Hogan  
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**RE: Comments on the Draft Environmental Impact Statement for Hydropower License - Eagle Mountain Pumped Storage Hydroelectric Project—FERC Project No. 13123-002 California.**

Dear Mr. Hogan:

These comments are submitted on behalf of the Center for Biological Diversity's 255,000 staff, members and on-line activists in California and throughout the western states, regarding the Draft Environmental Impact Statement for Hydropower License - Eagle Mountain Pumped Storage Hydroelectric Project—FERC Project No. 13123-002 California, issued by Federal Energy Regulatory Commission ("FERC").

The development of energy production that reduces greenhouse gas emissions and avoids the worst consequences of global warming is critical. The Center for Biological Diversity (the "Center") strongly supports the development of sustainable energy production, however, like any project, the proposed pumped storage hydroelectric project should be thoughtfully planned to minimize impacts to the environment. In particular, it should avoid impacts to sensitive species and habitats, and should be sited in proximity to the areas of electricity end-use in order to reduce the need for extensive new transmission corridors and lines and the efficiency loss associated with extended energy transmission. Only by maintaining the highest environmental standards with regard to local impacts, and effects on species and habitat, can these types of pumped storage projects produce energy that is truly sustainable.

As proposed, the project right of way would disturb almost 1,060 acres of public lands in the Colorado Desert that provide habitat for many species including the threatened desert tortoise in addition to 1,162 acres of private lands on the Eagle Mountain Mine site, which has a proposal for a trash dump. The proposed project also includes a gen-tie line, a new substation and other ancillary structures. The DEIS for the proposed project: fails to provide adequate identification and analysis of all of the significant impacts of the proposed project on the desert tortoise, golden

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eagles, and other rare plants, animals and vegetation communities including Colorado desert microphyll woodlands, and other biological resources and water resources. The DEIS also fails to adequately address the significant cumulative impacts of the project; and lacks consideration of a reasonable range of alternatives.

Of particular concern is the FERC's failure to include adequate information regarding the impacts to resources and the failure to fully examine the impact of the proposed project to the California Desert Conservation Act Plan ("CDCA Plan") along with other energy projects and their proposed plan amendments. As a result the current piecemeal process of energy projects especially in the area of this proposed project site appears to be on track to result in the approval of industrial sites sprawling across the California Desert generally, and the Chuckwalla Valley in particular, within habitat that should be protected to achieve the goals of the bioregional plan as a whole. This piecemeal and segmented approach maximizes (rather than minimizes) the indirect and cumulative impacts of each of the projects and will cause extensive habitat fragmentation. The DEIS also fails to adequately consider potential alternatives that would protect the most sensitive lands within the proposed ROW from all future industrial development. Alternative siting and alternative technologies (including solar energy, which was erroneously referred to as being able to "provide power at low rates during night-time or low-demand hours, compared to rates available during day-time, high-demand hours [DEIS at pg. 4] – solar energy actually act as peaker plants during the sunlight hours only) should have been fully considered in the DEIS, because they could significantly reduce the impacts to many species, soils, and water resources in the Colorado Desert.

In the sections that follow, the Center provides detailed comments on the ways in which the DEIS fails to adequately identify and analyze many of the impacts that could result from the proposed project, including but not limited to: impacts to biological resources, impacts to water resources, impacts to soils, direct and indirect impacts from the gen-tie line and substation, and cumulative impacts.

## **I. The FERC's Analysis of the Proposed Project Fail to Comply with FLPMA.**

As part of FLPMA, Congress designated 25 million acres of southern California as the California Desert Conservation Area ("CDCA"). 43 U.S.C. § 1781(c). Congress declared in FLPMA that the CDCA is a rich and unique environment teeming with "historical, scenic, archaeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources." 43 U.S.C. § 1781(a)(2). Congress found that this desert and its resources are "extremely fragile, easily scarred, and slowly healed." *Id.* For the CDCA and other public lands, Congress mandated that the BLM "shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C § 1732(b).

The DEIS does not appear to provide the specific language for a proposed amendment to the CDCA plan. While the DEIS describes the proposed action alternative, reference to a plan amendment missing. The DEIS must lay out a process for a CDCA plan amendment that would incorporate the new powerline, water pipeline and substation. Given the impact of the proposed project on other multiple uses of these public lands at the proposed sites as well as other aspects

of the bioregional planning, it is clear that other parts of the CDCA plan may also need to be amended, and the DEIS should have looked at all the different amendments as part of the alternatives analysis.

The Center has repeatedly sought stronger protections for desert tortoise and tortoise critical habitat both in the DWMA's and in other areas within the CDCA as a whole and particularly within the NECO planning area. Despite the fact that desert tortoise populations in the NECO DWMA's continue to decline, BLM has continued to allow activities that significantly impact tortoise and critical habitat within the DWMA's and in other areas of occupied habitat outside of the DWMA's. As detailed below, the proposed project will significantly impact occupied desert tortoise habitat both outside of DWMA and within DWMA and alternatives should have been considered to relocate *all* of the project elements to minimize these impacts but even the State Water Board Recommended Transmission Line Alternative still impacts desert tortoise habitat, DWMA and federally designated critical habitat. Alternatives need to be included that avoids occupied tortoise habitat, DWMA and federally designated critical habitat.

FERC has failed to explain how this proposed project would interface with the Solar PEIS process that is already under way and the numerous large-scale industrial solar projects that are proposed in the Chuckwalla Valley adjacent to the propose project site. The DEIS also fails to explain how the proposed substation relates to the Red Bluff substation (which is needed for the proposed Desert Sunlight project to interconnect to the Devers Palo Verde 1 transmission line), and relates to earlier review by BLM for the Devers Palo Verde 2 transmission line ROW and the yet-to-be-completed review for the Colorado River substation "expansion" which may also be a connected action that is part of the DPV2 transmission line. It is unclear if the "State Water Board Recommended Substation" is the same as the proposed Red Bluff Substation Alternative A as presented in the Draft Environmental Impact Statement and California Desert Conservation Area Plan Amendment for the Proposed First Solar Desert Sunlight Solar Farm Project, Riverside County, California BLM Case File Number CACA #48649, issued by the Bureau of Land Management ("BLM"). It is unclear if any of the proposed transmission footprint alternatives in this DEIS are the same as the transmission line alternatives proposed in the Desert Sunlight DEIS. Because it is unclear if multiple transmission lines will be coming from the same general area (this proposed project and the proposed Desert Sunlight project), the Center is very concerned about the proliferation of separate transmission lines for each project, when they could easily be consolidated, and the additional road and infrastructure that will exacerbate the direct, indirect and cumulative impacts including landscape level fragmentation. Failing to address these complex transmission issues results in a piecemeal review, that is very unclear to the public and decision makers and potentially much more harmful to the environment because of the impacts and fragmentation to the landscape as a whole. The Center is concerned that the result of the current process is a piecemeal approach to project review with site-specific approvals made before that threaten to undermine the "bioregional" approach in the CDCA Plan as a whole as well as violate the fundamental planning principles of FLPMA.

As noted above, the DEIS fails to adequately address the proposed project in the context of other connected projects (including multiple solar energy projects, substations and additional transmission lines) and the ongoing solar PEIS planning process for solar development in six

western states undertaken by BLM and DOE, where the draft plan and DEIS is currently out for public review. There is a high risk that the direct, indirect and cumulative impacts of the proposed project in conjunction with others may lead to sprawl industrial development in the area and undermine the planning for sensible energy development.

As detailed below in the NEPA sections, here the FERC has failed to compile an adequate inventory of the resources of the public and private lands that could be affected by the proposed project *before* preparing the DEIS (including, e.g., desert tortoise densities, rare plants, migratory birds, bats and other biological resources) which is necessary in order to adequately assess the impacts to resources of these lands in light of the proposed project and FERC has also failed to adequately analyze impacts on known resources. For example, the DEIS states “To reduce the potential for project effects on sensitive bats, Eagle Crest proposes to conduct preconstruction bat surveys, using a qualified bat biologist, to determine the existence, location, and condition of bat roosts on the project site.” (DEIS at pg. 115). These types of bats surveys should have been done prior to the environmental impact analysis, so that an accurate analysis could have been done. Instead requisite surveys are deferred until after potential project approval, when it will be too late to redesign the project to avoid impacts. Another example of the failure of the DEIS is in regards to special status plant surveys. It is unclear if they were performed just during the spring season. The project area, indeed the whole Chuckwalla Valley, is subject to bimodal precipitation, and that summer rains germinate a suite of summer annuals, some of which are rare species and have been found on nearby development sites. Yet another example of failure to conduct adequate surveys is the surveys for the Couch’s spadefoot toad, where the DEIS notes that “No surveys were conducted in the central project area.”(DEIS at pg. 99). Even three years of surveys may be inadequate to evaluate the rare species on the project site due to the episodic nature of rainfall and the resources that precipitation supports. Coupled with the uniqueness of the proposed project, as well as related and cumulative projects, such a controversial project would typically have been subject to many years of careful surveys and documentation of onsite resources.

Therefore, it appears that a revised DEIS or supplemental DEIS must be prepared to include several categories of new information including new survey data about the resources of the site and potential impacts of the project on resources of our public land and water, and that document must be circulated for public review and comment.

## **II. The DEIS Fails to Comply with NEPA.**

NEPA is the “basic charter for protection of the environment.” 40 C.F.R. § 1500.1(a). In NEPA, Congress declared a national policy of “creat[ing] and maintain[ing] conditions under which man and nature can exist in productive harmony.” *Or. Natural Desert Ass’n v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1120 (9th Cir. 2008) (quoting 42 U.S.C. § 4331(a)). NEPA is intended to “ensure that [federal agencies] ... will have detailed information concerning significant environmental impacts” and “guarantee[] that the relevant information will be made available to the larger [public] audience.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

Under NEPA, before a federal agency takes a “major [f]ederal action[] significantly affecting the quality’ of the environment,” the agency must prepare an environmental impact statement (EIS). *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1067 (9th Cir. 2002) (quoting 43 U.S.C. § 4332(2)(C)). “An EIS is a thorough analysis of the potential environmental impact that ‘provide[s] full and fair discussion of significant environmental impacts and ... inform[s] decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.’” *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 993 (9th Cir. 2004) (citing 40 C.F.R. § 1502.1). An EIS is NEPA’s “chief tool” and is “designed as an ‘action-forcing device to [e]nsure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government.’” *Or. Natural Desert Ass’n*, 531 F.3d at 1121 (quoting 40 C.F.R. § 1502.1).

An EIS must identify and analyze the direct, indirect, and cumulative effects of the proposed action. This requires more than “general statements about possible effects and some risk” or simply conclusory statements regarding the impacts of a project. *Klamath Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 995 (9th Cir. 2004) (citation omitted); *Oregon Natural Resources Council v. BLM*, 470 F.3d 818, 822-23 (9th Cir. 2006). Conclusory statements alone “do not equip a decisionmaker to make an informed decision about alternative courses of action or a court to review the Secretary’s reasoning.” *NRDC v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988).

NEPA also requires the FERC to ensure the scientific integrity and accuracy of the information used in its decision-making. Even in those instances where complete data is unavailable, the EIS also must contain an analysis of the worst-case scenario resulting from the proposed project. *Friends of Endangered Species v. Jantzen*, 760 F.3d 976, 988 (9th Cir. 1985) (NEPA requires a worst case analysis when information relevant to impacts is essential and not known and the costs of obtaining the information are exorbitant or the means of obtaining it are not known) *citing Save our Ecosystems v. Clark*, 747 F.2d 1240, 1243 (9th Cir. 1984); 40 C.F.R. § 1502.22.

***A. Purpose And Need and Project Description are Too Narrowly Construed and Unlawfully Segment the Analysis***

Agencies cannot narrow the purpose and need statement to fit only the proposed project and then shape their findings to approve that project without a “hard look” at the environmental consequences. To do so would allow an agency to circumvent environmental laws by simply “going-through-the-motions.” It is well established that NEPA review cannot be “used to rationalize or justify decisions already made.” *Metcalf v. Daley*, 214 F.3d 1135, 1141-42 (9th Cir. 2000) (“the comprehensive ‘hard look’ mandated by Congress and required by the statute must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.”) As Ninth Circuit noted an “agency cannot define its objectives in unreasonably narrow terms.” *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F. 3d 900, 812 (9th Cir. 1999). The

statement of purpose and alternatives are closely linked since “the stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives.” *City of Carmel*, 123 F.3d at 1155. The Ninth Circuit recently reaffirmed this point in *National Parks Conservation Assn v. BLM*, 586 F.3d 735, 746-48 (9th Cir. 2009) (holding that “[a]s a result of [an] unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives” in violation of NEPA).

The purpose behind the requirement that the purpose and need statement not be unreasonably narrow, and NEPA in general is, in large part, to “guarantee[ ] that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The agency cannot camouflage its analysis or avoid robust public input, because “the very purpose of a draft and the ensuing comment period is to elicit suggestions and criticisms to enhance the proposed project.” *City of Carmel-by-the-Sea*, 123 F.3d at 1156. The agency cannot circumvent relevant public input by narrowing the purpose and need so that no alternatives can be meaningfully explored or by failing to review a reasonable range of alternatives.

The FERC’s purpose and need for the proposed project is to “decide whether to issue a license to Eagle Crest for the Eagle Mountain Project and what conditions should be placed on any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (such as flood control, irrigation, or water supply), the Commission must give equal consideration to: (1) energy conservation; (2) the protection of, mitigation of damage to, and enhancement of fish and wildlife resources; (3) the protection of recreational opportunities; and (4) the preservation of other aspects of environmental quality.” (DEIS at pg.3).

The DEIS fails to discuss the comprehensive plan for developing this waterway, which currently does not exist. The proposed project is a net energy loser as recognized in the DEIS (at pg. 3), where it states that “The project would ...generate about 4,308 GWh annually, while consuming 5,744 GWh annually to pump water back up to the upper reservoir.” Because the proposed project is located directly adjacent to Joshua Tree National Park and the preferred alternative transmission line will impact federally and state listed threatened desert tortoise, its federally designated critical habitat and portions of a Desert Wildlife Management Area that has been established for desert tortoise conservation makes clear that this project negatively affects the protection of and enhancement of fish and wildlife resources. It is unclear if the impacts especially to the desert tortoise and its habitat can actually be mitigated, especially in light of the other adjacent projects which will also be required to mitigate for the desert tortoise impacts. Habitat is not being created for this species, so impacts are a net loss to the species. The Center also believes that the substantial groundwater pumping that the proposed project will require will significantly impact the groundwater dependent resources in this arid area., therefore impacting “other aspects of the environmental quality”.

The FERC's purpose and need is very narrowly construed to the proposed project itself. The purpose and need provided in the DEIS is impermissibly narrow under NEPA for several reasons, most importantly because it forecloses meaningful alternatives review in the DEIS. Because the purpose and need and the alternatives analysis are at the "heart" of NEPA review and affect nearly all other aspects of the EIS, on this basis and others, the FERC must revise and re-circulate the DEIS.

The habitat fragmentation, loss of connectivity for terrestrial wildlife, and introduction of predators and invasive weed species associated with the proposed project in the proposed location may run contrary to an effective energy strategy. Siting the proposed project in the proposed location impacting ecologically functioning ecosystems, occupied habitat for a threatened species and important habitat linkage areas, major washes and other fragile desert resources could undermine a meaningful climate change adaptation strategy with a poorly executed mitigation strategy. Moreover, the project itself will emit greenhouse gases during construction and operation in particular and the DEIS contains no discussion of ways to avoid, minimize or off-set these emissions although such mitigation is clearly necessary. The way to maintain healthy, vibrant ecosystems is not to fragment them and reduce their biodiversity.

### ***B. The DEIS Does Not Adequately Describe Environmental Baseline***

The DEIS fails to provide adequate baseline information and description of the environmental setting in many areas including in particular the status of rare plants, animals and communities including but not limited to desert tortoise, bats, rare plants, and Couch's spadefoot toad.

The baseline descriptions in the DEIS are inadequate particularly for the areas where surveys were a single season, a day, or not performed at all. As discussed below, because of the deficiencies of the baseline data for the proposed project area, the DEIS fails to adequately describe the environmental baseline. Many of the rare and common but essential species and habitats have incomplete and/or vague on-site descriptions that make determining the proposed project's impacts difficult at best. Some of the rare species/habitats baseline conditions are totally absent and as a result no impact assessment is provided either. A supplemental document is required to fully identify the baseline conditions of the site, and that baseline needs to be used to evaluate the impacts of the proposed project.

### ***C. Failure to Identify and Analyze Direct and Indirect Impacts to Biological Resources***

The EIS fails to adequately analyze the direct, indirect, and cumulative impacts of the proposed project on the environment. The Ninth Circuit has made clear that NEPA requires agencies to take a "hard look" at the effects of proposed actions; a cursory review of environmental impacts will not stand. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150-52, 1154 (9<sup>th</sup> Cir. 1998). Where the FERC has incomplete or insufficient information, NEPA requires the agency to do the necessary work to obtain it where possible. *see National Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 733 (9<sup>th</sup> Cir. 2001) ("lack of knowledge

does not excuse the preparation of an EIS; rather it requires [the agency] to do the necessary work to obtain it.”)

Moreover, the FERC must look at reasonable mitigation measures to avoid impacts in the DEIS but failed to do so here. Even in those cases where the extent of impacts may be somewhat uncertain due to the complexity of the issues, the FERC is not relieved of its responsibility under NEPA to discuss mitigation of reasonably likely impacts at the outset. Even if the discussion may of necessity be tentative or contingent, NEPA requires that the FERC provide some information regarding whether significant impacts could be avoided. *South Fork Band Council of Western Shoshone v. DOI*, 588 F.3d 718, 727 (9th Cir. 2009).

The lack of comprehensive surveys is particularly problematic. Failure to conduct sufficient surveys prior to construction of the project also effectively eliminates the most important function of surveys - using the information from the surveys to avoid and minimize harm caused by the project and reduce the need for mitigation. Often efforts to mitigate harm are far less effective than avoiding and preventing the harm in the first place. In fact, effective mitigation to offset impacts has proved inadequate at best.<sup>1</sup> In addition, without understanding the scope of harm before it occurs, it is difficult to quantify an appropriate amount and type of mitigation.

The DEIS fails to provide all of the information necessary for decisionmakers and the public to adequately review the proposed project. Therefore the impacts cannot be fully analyzed or mitigated appropriately or fully. For this reason alone, a supplemental or revised DEIS needs to be provided and additional alternatives are included (including a preferred alternative) that avoids and reduces the impacts to biological resources.

The Recirculated or Supplemental DEIS also should consider and include the final recommendations of the Independent Science Advisors (ISA) that was convened by the Desert Renewable Energy Conservation plan<sup>2</sup>. This eminent group of scientists from many different research backgrounds laid out some basic principles for siting projects in arid desert lands including:

- **Avoid Soil Disturbance**
- **Avoid Disrupting Geological Processes**

(at page vi – Executive Summary). Clearly the proposed project and alternatives (except the no action alternative) fail to follow these two very basic principles.

With regards to transplantation and relocation of plants and animals, the ISA state that “In general, moving organisms from one area to another—for example, out of an impact area into a reserve area—is *not* a successful conservation action and may do more harm than good to conserved populations by spreading diseases, stressing resident animals, increasing mortality, and decreasing reproduction and genetic diversity. Transplantation or translocations should be considered a last recourse for unavoidable impacts, should never be considered full mitigation

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1 Moilanen et al 2009, Norton 2008

2 <http://www.energy.ca.gov/2010publications/DRECP-1000-2010-008/DRECP-1000-2010-008-F.PDF>

for the impact, and in all cases must be treated as experiments subject to long-term monitoring and management.” (at pg. Vii – Executive Summary). The DEIS fails to consider the impacts of moving both plants and animals from the project site onto adjacent areas. As discussed below the DEIS fails to evaluate the impacts of any of the translocated species on resident species and habitat – at a minimum, carrying capacity (the ability of the habitat to support species) of the landscape where species area proposed to be moved needs to be included

### *1. Desert Tortoise*

The desert tortoise has lived in the western deserts for tens of thousands of years. In the 1970’s their populations were noted to decline. Subsequently, the species was listed as threatened by the State of California in 1989 and by the U.S. Fish and Wildlife Service in 1990, which then issued a Recovery Plan for the tortoise in 1994. The U.S. Fish and Wildlife Service is in the process of updating the Recovery Plan, and a Draft Updated Recovery Plan was issued in 2008, however it has not been finalized to date. Current data indicate a continued decline across the range of the listed species<sup>3</sup> despite its protected status and recovery actions.

The original and draft Updated Recovery Plans both recognize uniqueness in desert tortoise populations in California. This particular subpopulation of tortoise at the proposed project site is part of the Eastern Colorado Recovery unit<sup>4</sup>. Recent population genetics studies<sup>5</sup> have further reconfirmed 1994 Recovery Plan conclusions - the Eastern Colorado Recovery unit was one of the most genetically unique recovery units. While the proposed project site may have low desert tortoise densities, this particular recovery unit has also been documented to have the second highest declines in population over the last two years – 37% decline<sup>6</sup>. The DEIS fails to identify and consider the localized impact to this recovery unit that is already in steep decline.

While Table 11. Acreage of desert tortoise habitat in the Eagle Mountain Pumped Storage Project area (Source: Eagle Crest, 2009a) (DEIS at pg. 121) documents the amount of habitat impact from the proposed project,, the DEIS fails to present the estimated number of desert tortoises on the proposed project. The total number of animals that were encountered on the project reflects a subset of the number of animals actually present. Therefore, the DEIS does not provide information on the number of desert tortoise might need to be moved. Also it is unclear if U.S. Fish and Wildlife Service protocol level surveys were conducted for any year other than 2009. A single year of protocol level surveys for this threatened species is inadequate.

Despite reliance on surveys and USFWS methodologies for estimating the number of desert tortoise on the proposed project site, the numbers may still be underestimated. Recently, on the Brightsource Ivanpah Valley site, which utilized U.S Fish and Wildlife Service protocol level

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[http://www.fws.gov/nevada/desert\\_tortoise/documents/reports/2007\\_Rangewide\\_Desert\\_Tortoise\\_Population\\_Monitoring.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/reports/2007_Rangewide_Desert_Tortoise_Population_Monitoring.pdf)

<sup>4</sup> [http://ecos.fws.gov/docs/recovery\\_plans/1994/940628.pdf](http://ecos.fws.gov/docs/recovery_plans/1994/940628.pdf)

<sup>5</sup> Murphy et al. 2007

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[http://www.fws.gov/nevada/desert\\_tortoise/documents/reports/2007\\_Rangewide\\_Desert\\_Tortoise\\_Population\\_Monitoring.pdf](http://www.fws.gov/nevada/desert_tortoise/documents/reports/2007_Rangewide_Desert_Tortoise_Population_Monitoring.pdf)

surveys and estimation methodology, the numbers of desert tortoise on the whole three-phase site were estimated to be 38. However when clearance surveys for the *first phase* were implemented, at least 42 desert tortoise were found. The Brightsource site in Ivanpah Valley is also located in BLM designated “Category 3” habitat. As the survey results in and around this project area suggest, while the desert tortoise are not evenly distributed across the landscape, there are pockets of much higher density desert tortoise occupancy in these “Category 3” lands than even in parts of the DWMA that may be affected by the proposed project. In addition, the categories of desert tortoise habitat were designated before the widespread recognition that global climate change was affecting the deserts. Now these Category 3 areas may be more important over the long-term either as habitat or connectivity for desert tortoise movement<sup>7</sup>

Determination of home ranges for the on-site tortoises is not provided. No impacts to tortoises are analyzed regarding home range impact. While a Desert Tortoise Removal and Translocation Plan is proposed to be implemented (DEIS at xvii), that document is not available for public review and therefore the public and decision makers can not evaluate the strategy of the plan, if it complies with the Independent Science Advisors’ report or even its general adequacy. It is unclear if desert tortoise exclusion fencing will be utilized, where it will be utilized, how much etc. and if it were to go up how home ranges and connectivity would be affected.

The preferred transmission alternative is located within the DWMA. The DEIS fails to identify that this part of the DWMA is also the proposed “recipient site” for the desert tortoises that will be translocated from the Desert Sunlight project, if that project is permitted and constructed. Translocated tortoises will increase the density of tortoises in the project area, yet the DEIS fails to address this issue. Additional complications arise with the translocated desert tortoises – they are notorious for trying to (and sometimes succeeding in) returning to their home ranges. This translocation behavior makes them more vulnerable to negative impacts. The DEIS needs to address these issues.

While the DEIS fails to provide a translocation plan, the plan needs to include all of the existing Desert Tortoise Recovery Plan<sup>8</sup> (1994) recommendations, and also the ISA recommendations<sup>9</sup>. Recent desert tortoise translocations have resulted in significant short-term mortality of 45% or greater<sup>10</sup> and unknown long-term survivorship.

Mechanisms need to be included to assure that any and all mitigation acquisitions will be conserved in perpetuity for the conservation of the desert tortoise. If those acquisitions are within existing Desert Wildlife Management Areas (DWMAs), higher levels of protection than are currently in place for DWMAs need to be put in place. NEPA mandates consideration of the relevant environmental factors and environmental review of “[b]oth *short- and long-term effects*” in order to determine the significance of the project’s impacts.(emphasis added). The FERC has clearly failed to do so in this instance with respect to the impact to the desert tortoise.

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7 Barrows 2009.

8 [http://ecos.fws.gov/docs/recovery\\_plans/1994/940628.pdf](http://ecos.fws.gov/docs/recovery_plans/1994/940628.pdf)

9 <http://www.energy.ca.gov/2010publications/DRECP-1000-2010-008/DRECP-1000-2010-008-F.PDF>

10 Gowan and Berry 2009.

While the DEIS fails to clearly identify the mitigation ratio for habitat acquisition for the desert tortoise, it appears that only a 2:1 mitigation ratio is proposed – 83.2 to 84.3 acres (DEIS at pg. 121) and only 160 acres of mitigation acquisition (DEIS at pg. 126). This ratio of mitigation acquisition is way too low. The BLM requires 5:1 for DWMA and the U.S Fish and Wildlife Service requires 5:1 for critical habitat. Category 3 habitat should also have 5:1 mitigation for impacts. So the mitigation acquisition of high quality desert tortoise habitat should be over 400 acres. Mitigation presumes that acquisition will be suitable tortoise habitat (occupied or unoccupied) which is currently existing and providing benefits to the species, to off-set the elimination of the proposed project site. However, this strategy is still *a net loss of habitat* to the desert tortoise, as currently they are using or could use both the mitigation site and the proposed project site. Therefore, in order to aid in recovery of this declining species, at a minimum a 5:1 mitigation ratio should be required as mitigation for the impact of occupied desert tortoise habitat on the proposed project site.

If tortoises are relocated or translocated outside of the DWMA, then the relocation and/or translocation areas need to be secured for tortoise conservation in perpetuity, to preclude moving the animals subsequently if additional projects move forward on the relocation or translocation site(s). Under no circumstances should desert tortoises be moved more than once, if at all.

While the DEIS recognizes that impacts from the proposed project will occur to desert tortoise there is no analysis of the significance of those impacts.

## 2. Sand Transport System

The DEIS fails to consider the contribution that the proposed project site makes to the sand transport system of the larger Chuckwalla Valley if the State Water Resources Control Board alternative is adopted. The site need not have active dunes on it to be an integral part of the sand transport corridor and overall eolian system. In fact, the area of the proposed State Water Resources Control Board alternative appears to lie within the sand transport corridor that comes out of the Pinto Basin in Joshua Tree National Park and sustains the Palen dunes “downstream” of the proposed project site<sup>11</sup>. The impacts of the proposed project to the sand transport corridor, and the down-wind sand dune habitat which supports the Mojave fringe-toed lizard could be significant and that analysis must be done in a revised or supplemental DEIS.

## 3. Rare and Special Status Plants

As mentioned above, it is unclear if the requisite fall botanical surveys were done before the DEIS was prepared making the analysis inadequate and the botanical surveys potentially inadequate. These incomplete data sets preclude evaluation of the impacts, or more importantly the ability to design the project to avoid and minimize impacts. Clearly a supplemental DEIS is required to present these missing data.

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11 Muhs et al. 2003

#### 4. Avifauna

##### Migratory Birds

The DEIS defers the issues of migratory birds and the potential impact to them and fails to provide the baseline data from which to make any impact assessment violates NEPA. This failure to analyze impacts is not only a NEPA violation, but for migratory birds, may also lead to a violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 -711, because migratory birds may be “taken” if the proposed project is constructed.

No Avian and Bat Protection Plan is proposed despite recognition that the fact that evaporation ponds will be present. The DEIS fails to identify the impact of the reservoirs on migratory birds and bats

Additionally Executive Order 13186 states “Each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations is directed to develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service (Service) that shall promote the conservation of migratory bird populations.”<sup>12</sup> Furthermore the EO states that goals pursuant to the MOU include “3) prevent or abate the pollution or detrimental alteration of the Environment for the benefit of migratory birds, as practicable;” and “(6) ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern”. Clearly, the supplemental DEIR needs to adequately identify the migratory bird issues on site and evaluate the impact to those species in light of the guidance in Executive Order 13186.

##### Burrowing Owls

The DEIS notes that burrowing owls are located in the proposed project area (DEIS at pg. 98). Preliminary results from the 2006-7 statewide census identified that the Sonoran desert harbors few Western burrowing owls.<sup>13</sup> Even more worrisome is the documented crash of burrowing owls in their former stronghold in the Imperial Valley. The Imperial Valley has had a recently documented decline of 27% in the past 2 years<sup>14</sup>, resulting in an even more dire state for burrowing owls in California. Because burrowing owls are in decline throughout California, and now their “stronghold” is documented to be declining severely, the burrowing owls on this proposed project site (and on other adjacent energy projects) become even more important to species conservation efforts. The recirculated or supplemental DEIS needs to evaluate the potential impact of the proposed project on this regional distribution of owls.

The DEIS acknowledges that the surveys for burrowing owl are incomplete and that Phase III surveys still need to be completed (DEIS at pg. 21). Surprisingly, no mitigation is proposed to offset the potential impacts to burrowing owls in the DEIS. Mean burrowing owl

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<sup>12</sup> <http://ceq.hss.doe.gov/nepa/regs/eos/eo13186.html>

<sup>13</sup> IBP 2008

<sup>14</sup> Manning 2009.

foraging territories are 242 hectares in size, although foraging territories for owl in heavily cultivated areas is only 35 hectares<sup>15</sup>. Regardless, mitigation acreage needs to be required – calculated using the mean foraging territory size times the number of owls. Using the average foraging territory size for mitigation calculations may not accurately predict the carrying capacity and may *overestimate* the carrying capacity – it may be that in this area of the Colorado desert 2,000+ acres is necessary to support a pair of burrowing owls. The supplemental DEIS must not rely on guidance from California Department of Fish and Game from 2003, because that guidance is now out of date in light of identified population declines<sup>16</sup>, a more thorough census of burrowing owls throughout the state<sup>17</sup> and additional research on the species habitat<sup>18</sup>. Lastly, because the carrying capacity is tied to habitat quality, mitigation language should be included that mitigation lands that are acquired for burrowing owl be native habitats on undisturbed lands, not cultivated lands, which are subject to the whims of land use changes. The long-term persistence of burrowing owls lie in their ability to utilize natural landscapes, not human-created ones.

While “passive relocation” does minimize immediate direct take of burrowing owls, ultimately the burrowing owls’ available habitat is reduced, and “relocated” birds are forced to compete for resources with other resident burrowing owls and may move into less suitable habitat, ultimately resulting in “take”. While the DEIS proposes to passively relocate burrowing owls (DEIS at pg.112), it should also require a plan for long-term monitoring of passively relocated birds in order to evaluate survivorship of passively relocated birds. Additionally no requirement for constructed burrows is identified as mitigation for the destruction of impacted burrows. Other energy projects in the area have been required to construct burrows for impacted burrowing owl burrows

### *Golden Eagle*

The DEIS states that

“As part of its July 7, 2010, filing (Eagle Crest, 2010a), Eagle Crest provided results from golden eagle surveys that took place in March and April 2010. The surveys covered mountainous areas within 10 miles of the proposed project. The surveyors located a total of 34 golden eagle nest sites distributed among nine active and five inactive eagle territories in the project region. Four of the territories identified overlap the Eagle Mountain Project area. Surveyors recorded one incubating golden eagle female within the nine active territories..”

(DEIS at 99). The DEIS fails to present exactly how to mitigate the loss of foraging habitat for the golden eagle from this project and other proposed projects within these territories. The fact still remains that significant amounts of foraging habitat will decrease carrying capacity of the

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15 USFWS 2003

16 Manning 2009

17 Wilkerson and Siegel 2010

18 USFWS 2003

landscape and could result in a potential loss of habitat needed to support a nesting pair, which would impact reproductive capacity.

Scientific literature on this subject is clear - the presence of humans detected by a raptor in its nesting or hunting habitat can be a significant habitat-altering disturbance even if the human is far from an active nest<sup>19</sup>. Regardless of distance, a straight-line view of disturbance affects raptors, and an effective approach to mitigate impacts of disturbance for golden eagles involves calculation of viewsheds using a three-dimensional GIS tool and development of buffers based on the modeling<sup>20</sup>. Golden eagles have also been documented to avoid industrialized areas that are developed in their territory.<sup>21</sup> Additionally, the DEIS does not actually clearly analyze the impacts to and mitigations for the golden eagle under the Bald Eagle and Golden Eagle Protection Act, which prohibits, except under certain specified conditions, the take, possession, and commerce of such birds.

The revised or supplemental EIS must address potential impacts to golden eagles, a state fully protected species and a federal species of concern protected both under the Migratory Bird Treaty Act and the Bald and Golden Eagle Act. Because of significantly declining populations of golden eagles, the U.S. Fish and Wildlife Service issued new guidance March of 2010 with regards to surveying and impact analysis to golden eagles.<sup>22</sup> They recently released a Draft Eagle Conservation Plan.<sup>23</sup> The EIS must incorporate these golden eagle guidance documents into the analysis for this proposed project.

### 5. *Badger*

Badgers were documented on the site in 2008 and 2009 (DEIS at Table 10). Literature on the highly territorial badger indicates that badger home territories range from 340 to 1,230 hectares<sup>24</sup>. Therefore, the proposed project could impact *at least* one badger territory. While surveys prior to construction are clearly essential, even passive relocation of badgers into suitable habitat may result “take”. Excluding badger from the site is likely to cause badgers to move into existing badger’s territory. The recirculated or supplemental DEIS needs to include an actual analysis of impacts to badgers from the proposed project.

### 6. *Desert Kit Foxes*

The DEIS fails to mention status of the desert kit fox, much less provide data on the presence or absence of the species on site or the locations of natal and other types of dens. Desert kit foxes are “protected furbearing mammals” under California Code of Regulations, Title 14, section 460 and may not be “taken” at any time. As such the DEIS fails to analyze the impacts to this species as required. In fact the DEIS inappropriately proposes that “Eagle Crest

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19 Richardson and Miller 1997

20 Camp et al. 1997; Richardson and Miller 1997

21 Walker et al. 2005

22 [www.fws.gov/.../USFWS Interim GOEA Monitoring Protocol 10March2010.pdf](http://www.fws.gov/.../USFWS_Interim_GOEA_Monitoring_Protocol_10March2010.pdf)

23 [http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)

24 Long 1973, Goodrich and Buskirk 1998

would avoid active burrows and all fox natal dens where possible.” If kit foxes are present in natal or other dens and are harmed by project activities, this would result in an illegal take under state law. The revised or supplemental DEIS should identify the density of kit foxes on the proposed project site, including natal and other dens. If passive relocation is identified as an avoidance strategy, the DEIS must evaluate if suitable habitat occurs nearby and is not already occupied by existing kit foxes.

### 7. *Cryptobiotic soil crusts and Desert Pavement*

The proposed project is located in the Mojave Desert Air Quality Management District area, which is already in non-attainment for PM-10 particulate matter<sup>25</sup>. The construction of the proposed project further increases emissions of these types of particles because of the disruption and elimination of potentially thousands of acres of cryptobiotic soil crusts. Cryptobiotic soil crusts are an essential ecological component in arid lands. They are the “glue” that holds surface soil particles together precluding erosion, provide “safe sites” for seed germination, trap and slowly release soil moisture, and provide CO<sub>2</sub> uptake through photosynthesis<sup>26</sup>.

The DEIS does not describe the on-site cryptobiotic soil crusts. The proposed project will disturb an unidentified portion of these soil crusts and cause them to lose their capacity to stabilize soils and trap soil moisture. The DEIS fails to provide a map of the soil crusts over the project site, and to present any avoidance or minimization measures. It is unclear how many acres of cryptobiotics soils will be affected by the project. The revised or supplemental DEIS must identify the extent of the cryptobiotic soils on site and analyze the potential impacts to these diminutive, but essential desert ecosystem components as a result of this project.

Another type of stabilized soils - desert pavements - are also not addressed in the DEIS, but as with the cryptobiotic soils, quantitative acreage of pavement are not identified. The impact to air quality from disturbance of desert pavement is not analyzed.

### 8. *Insects*

The DEIS fails to address insects on the proposed project site. In fact no surveys or evaluation of rare or common insects are included in the DEIS. Sandy habitats are notorious for supporting endemic insects, typically narrow habitat specialists<sup>27</sup>. The revised or supplemental DEIS must include an analysis of rare insects on the proposed project site.

### 9. *Desert Bighorn Sheep*

The DEIS recognizes that the “central project” is sited within the boundaries of the BLM’s Joshua Tree National Park Desert Bighorn Sheep Wildlife Habitat Management Area (DEIS at pg. 85), and that the Desert Bighorn Sheep (DBS) are a sensitive species (DEIS at xix). Yet no mitigation is proposed other than to fence them out of the project site. At a minimum,

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25 <http://www.mdaqmd.ca.gov/index.aspx?page=214>

26 Belnap 2003, Belnap et al 2003, Belnap 2006, Belnap et al. 2007

27 Dunn 2005.

mitigation acquisition to offset the habitat that will no longer be available to the DBS should be required to offset impacts to this species.

Additionally the proposed project would provide a new drinking water source for the DBS in the Eagle mountains, but no analysis of the effects of this new water source is provided. Will it bring sheep into harms way? The DEIS concludes that “the new water source is likely to disrupt the migration of the northern ewe population to Buzzard Spring” (DEIS at pg. 111), but does not analyze the severity of the impacts (or benefits). The public is left wondering exactly what will happen to the sheep.

#### *10. Other rare species not addressed*

Other rare species are known from the vicinity of the project site. For example, the rosy boa was observed on one of the substation alternative sites of the Desert Sunlight project . The revised or supplemental EIS must include all rare species, a discussion of their occurrence on site and avoidance, minimization and mitigation measures.

#### *11. Key Plans Unavailable for Public Review*

The DEIS refers to and references numerous key plans as part of the mitigation requirements, and yet these plans are not available for public review as part of the EIS. For example, all of these plans are referenced in the DEIS, but were not provided:

- Worker Environmental Awareness Program (WEAP) (DEIS at xviii);
- Phase 1 Pre-Design Site Investigation Plan (DEIS at xvii)
- Erosion and Sediment Control Plan (DEIS at xvii)
- Water Management Plan (DEIS at xvii)
- Invasive Species Monitoring and Control Plan (DEIS at xvii)
- Revegetation Plan (DEIS at xvii)
- Desert Tortoise Removal and Translocation Plan (DEIS at xvii)
- Raven Monitoring and Control Plan (DEIS at xvii)
- Historic Properties Management Plan (HPMP) (DEIS at xviii)
- Avian Protection Plan (DEIS at xviii)
- Directional Lighting Plan (DEIS at xxi)
- Evaporation Pond Management Plan (DEIS at pg. 21)
- mitigation plan to avoid roosting and foraging effects on resident bats, minimize disturbance, or, as an inescapable measure, evict bats (DEIS at pg. 22) also known as the bat protection and mitigation plan (DEIS at pg. 116)
- transportation management plan for employees (DEIS at pg. 24)
- reservoir-level monitoring plan (DEIS at pg. 26)
- brine pond-level monitoring plan (DEIS at pg. 26)
- desert tortoise predator control plan (DEIS at pg. 26)
- comprehensive water quality monitoring plan for the reservoirs, seepage wells, monitoring wells, and brine ponds (DEIS at pg. 71)
- plan to protect raptors from transmission electrocution hazards (DEIS at pg. 114)

Desert lands are notoriously hard to revegetate or rehabilitate<sup>28</sup> and revegetation never supports the same diversity that originally occurred in the plant community prior to disturbance<sup>29</sup>. The project will cause permanent impacts to the on-site plant communities and habitat for wildlife despite “revegetation”, because the agency’s regulations based on the Northern and Eastern Colorado Plan’s rehabilitation strategies<sup>30</sup> only requires 40% of the original density of the “dominant” perennials, only 30% of the original cover. Dominant perennials are further defined as “any combination of perennial plants that originally accounted cumulatively for at least 80 percent of relative density”.<sup>31</sup> These requirements fail to truly “revegetate” the plant communities to their former diversity and cover even over the long term. BLM’s regulations, 43 CFR 3809.550 et seq., require a detailed reclamation plan and a cost estimate, they need to be included in the revised or supplemental DEIS.

### *12. Wildlife Movement Corridor*

The DEIS identifies that the migration corridor for DBS will be disrupted by the additional water, however, no other wildlife movement corridors are identified although the DWMA was established to help provide connectivity from the Chuckwalla Bench area to Joshua Tree National Park. The whole project area is located within an area identified as an “essential connectivity area”<sup>32</sup> for wildlife identified by the California Essential Habitat Connectivity Project. Additional data need to be provided on the wildlife movement and linkage areas in and adjacent to the proposed project and then an analysis of the impacts from the proposed project on those resources needs to be included in the revised or supplemental EIS.

### *13. Failure to Identify Appropriate Mitigation*

Because the DEIS fails to provide adequate identification and analysis of impacts, inevitably, it also fails to identify adequate mitigation measures for the project’s environmental impacts. “Implicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ 42 U.S.C. § 4332(C)(ii), is an understanding that an EIS will discuss the extent to which adverse effects can be avoided.” *Methow Valley*, 490 U.S. at 351-52. Because the DEIS does not adequately assess the project’s direct, indirect, and cumulative impacts, its analysis of mitigation measures for those impacts is necessarily flawed. The DEIS must discuss mitigation in sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Methow Valley*, 490 U.S. at 352; *see also Idaho Sporting Congress*, 137 F.3d at 1151 (“[w]ithout analytical detail to support the proposed mitigation measures, we are not persuaded that they amount to anything more than a ‘mere listing’ of good management practices”). As the Supreme Court clarified in *Robertson*, 490 U.S. at 352, the “requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of [NEPA] and, more expressly, from

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28 Lovich and Bainbridge 1999

29 Longcore et al. 1997

30 <http://www.blm.gov/ca/st/en/fo/cdd/neco.html>

31 Ibid

32 Spencer et al. 2010

CEQ’s implementing regulations” and the “omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA.”

Although NEPA does not require that the harms identified actually be mitigated, NEPA does require that an EIS discuss mitigation measures, with “sufficient detail to ensure that environmental consequences have been fairly evaluated” and the purpose of the mitigation discussion is to evaluate whether anticipated environmental impacts *can be avoided*. *Methow Valley*, 490 U.S. at 351-52. As the Ninth Circuit recently noted: “[a] mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.” *South Fork Band Council of Western Shoshone v. DOI*, 588 F.3d 718, 727 (9th Cir. 2009) (emphasis in original).

Here, the DEIS does not provide a full analysis of possible mitigation measures to avoid or lessen the impacts of the proposed project and therefore the FERC cannot properly assess the likelihood that such measures would actually avoid the impacts of the proposed project.

#### **D. Impacts to Water Resources— Surface and Groundwater Water Impacts**

The proposed project will require initial massive groundwater pumping in order to fill the reservoirs, but we could not find any quantitative estimation of how much water would be required to fill the reservoirs. Ongoing groundwater pumping in order to replace water loss due to evaporation estimated at 1,700 acre-feet per year and an additional 1,600 acre-feet of water per year would seep from the project reservoirs (DEIS at pg. 65). Little analysis is provided on the effects of this water pumping on “downstream” resources including rare plants and plant communities that rely on groundwater for existence. These ground-water dependent habitats provide important habitat values that will be threatened and may be lost by the construction of the proposed project.

The DEIS failed to provide an evaluation of the existence of US Army Corps of Engineers jurisdictional waters occur on site. It also failed to provide an evaluation of the existence of Waters of the State.

Ephemeral and intermittent streams make up over 81% in the arid and semi-arid southwest (Arizona, New Mexico, Nevada, Utah, Colorado and California). These streams provide a variety of ecosystem services including

- landscape hydrologic connections;
- stream energy dissipation during high-water flows to reduce erosion and improve water quality;
- surface and subsurface water storage and exchange;
- ground-water recharge and discharge;
- sediment transport, storage, and deposition to aid in floodplain maintenance and development;
- nutrient storage and cycling;
- wildlife habitat and migration corridors;

- support for vegetation communities to help stabilize stream banks and provide wildlife services;
- and water supply and water-quality filtering<sup>33</sup>.

Yet the DEIS fails to evaluate the impact of the proposed project on the ephemeral and intermittent streams and the ecosystem processes that they provide both on and off of the proposed project site. The revised or supplement DEIS will need to include an analysis of these important issues.

**Reserved Water Rights:** The California Desert Protection Act (“CDPA”) expressly reserved water rights for wilderness areas that were created under the act. 16 U.S.C. §410aaa-76.<sup>34</sup> The CDPA reserved sufficient water to fulfill the purposes of the Act which include to “preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes,” “perpetuate in their natural state significant and diverse ecosystems of the California desert,” and “retain and enhance opportunities for scientific research in undisturbed ecosystems.” 103 P.L. 433, Sec. 2. The priority date of such reserved water rights is 1994 when the CDPA was enacted. Therefore, at minimum, the FERC must ensure that use of water for the proposed project (and cumulative projects) *over the life of the proposed projects* will not impair those values in the wilderness that depend on water resources (including perennial, seasonal, and ephemeral creeks, springs and seeps as well as any riparian dependent plants and wildlife).

Although no *express* reservation of rights has been made for many of the other public lands in the CDCA, the DEIS should have addressed the federal reserved water rights afforded to the public to protect surface water sources on all public lands affected by the proposed project. Pursuant to Public Water Reserve 107 (“PWR 107”), established by Executive Order in 1926, government agencies cannot authorize activities that will impair the public use of federal reserved water rights.

PWR 107 creates a federal reserved water right in water flows that must be maintained to protect public water uses. *U.S. v. Idaho*, 959 P.2d 449,453 (Idaho, 1998) *cert. denied*; *Idaho v. U.S.* 526 U.S. 1012 (1999); *Cappaert v. U.S.*, 426 U.S. 128, 145 (1976). PWR 107 applies to reserve water that supports riparian areas, reserve water that provides flow to adjacent creeks and isolated springs that are “nontributary” or which form the headwaters of streams. *U.S. v. City & County of Denver*, 656 P.2d 1, 32 (Colo., 1982). Accordingly, BLM cannot authorize activities that will impair the public use of reserved waters covered by PWR 107.

The FERC must examine the federal reserved water rights within the area affected by the proposed project and other proposed and recently approved projects in this area that will use significant amounts of groundwater. This examination must include a survey of the any water sources potentially affected by the proposed project. The FERC must ensure that any springs,

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33 Levick et al. 2008.

34 The reservation excluded two wilderness areas with regard to Colorado River water. See 103 P.L. 433; 108 Stat. 4471; 1994 Enacted S. 21; 103 Enacted S. 21, SEC. 204. COLORADO RIVER. (“With respect to the Havasu and Imperial wilderness areas designated by subsection 201(a) of this title, no rights to water of the Colorado River are reserved, either expressly, impliedly, or otherwise.”)

seeps, creeks or other water sources on public land and particularly within the wilderness areas are not degraded by the proposed projects' use of water and continue meet the needs of the existing wildlife and native vegetation that depend on those water resources.

PWR 107 also protects the public lands on which protected water sources exist. Accordingly, FERC should not only consider the impact of projects on water sources present on public lands, but also the direct and indirect impacts of the proposed project on the surrounding lands as well as impacts to the ecosystem as a whole.

The DEIS fails to identify which wells will be used for groundwater pumping. Figure 7 shows the "existing wells", "existing wells to be used for monitoring", "proposed new monitoring wells" and "seepage recovery wells". It is unclear if all existing wells will be used for pumping or if additional wells will be needed. It is unclear if the existing wells are on private or public lands.

The Center is concerned that the discussion in the DEIS is also incomplete because it fails to address any potential water rights that could arguably be created from use of groundwater by the proposed project on public lands. While the Center recognizes that this issue may involve somewhat complex legal issues, at minimum, the FERC must address this question and to either require the project proponent to agree that no water rights will be created or to otherwise ensure that any water rights that could *arguably* be created will be conveyed back to the BLM owner and run with the land at the end of the proposed project term. The FERC must provide a mechanism to insure that in no case will the use of water for the proposed project on these public lands result in water rights accruing to the project applicant that it could arguably convey to any third party. Therefore, any water rights *arguably* created by groundwater pumping on these lands for the proposed project must not ultimately accrue to any third party for use *off-site or on-site* in the future for any other project. Moreover, FERC should ensure that the applicant will not use the groundwater associated with the project off-site for any purpose.

The DEIS did not address the impact to water quality from the proposed project and its interaction with the proposed Eagle Mountain landfill. Because the lower reservoir is proposed to be lower than the landfill, there is potential for the landfill to contaminate the both reservoirs. The supplemental or revised EIS needs to better clarify the interactions between these directly adjacent projects.

Lastly, the proposed project area is hydrologically connected to the Colorado River, and therefore is part of the Colorado River Basin. The DEIS fails to evaluate the impacts to the Colorado River, with all of its existing complex water rights. The revised or supplemental EIS must include this important aspect. This very issue has been legally challenged for a proposed energy project in the same watershed.

**E. The DEIS Fails to Adequately Identify, Analyze and Off-set Impacts to Air Quality and GHG Emissions.**

Federal courts have squarely held that NEPA requires federal agencies to analyze climate change impacts. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (9th Cir. 2007). As most relevant here, NEPA requires consideration of greenhouse gas emissions (“GHG emissions”) associated with all projects and, in order to fulfill this requirement the agencies should look at all aspects of the project which may create greenhouse gas emissions including operations, construction, and life-cycle emissions from materials. Where a proposed project will have significant GHG emissions, the agency should identify alternatives and/or mitigation measures that will lessen such effects.

As part of the NEPA analysis federal agencies must assess and, wherever possible, quantify or estimate GHG emissions by type and source by analyzing the direct operational impacts of proposed actions. Assessment of direct emissions of GHG from on-site combustion sources is relatively straightforward. For the proposed project, energy consumption for manufacturing, transportation and construction, will be the major source of GHGs. The indirect effects of a project may be more far-reaching and will require careful analysis. Within this category, for example, the BLM should evaluate, GHG and GHG-precursor emissions associated with construction, electricity use, fossil fuel use, water consumption, waste disposal, transportation, the manufacture of building materials (lifecycle analysis), and land conversion. Moreover, because many project may undermine or destroy the value of carbon sinks, including desert soils, projects may have additional indirect effects from reduction in carbon sequestration, therefore both the direct and quantifiable GHG emissions as well as the GHG effects of destruction of carbon sinks should be analyzed.

The DEIS completely fails to discuss greenhouse gas emissions (“GHG”) either from construction or operation. The revised or supplemental EIS will need to include these data and an analysis of the “carbon footprint” for the proposed project.

The DEIS also fails to adequately address other air quality issues including PM10 both during construction and operation which is of particular concern in this area which is a nonattainment area for PM10 and ozone. It is clear that construction grading will result in significant amounts of bare soils and increased PM10 may be introduced into the air by wind and that the use of the area during construction and operations will lead to additional PM10 emissions from the site. Although some mitigation measures are suggested they are not specific and enforceable and because the extent of the impact has not been adequately addressed as an initial matter there is no way to show that the mitigation measures proffered will reduce the impacts to less than significance.

The FERC fails to identify any significant GHG emissions and therefore does not provide for avoidance, minimization, or mitigation. The FERC has also failed to include the loss of carbon sequestration from soils in its calculations or to provide a lifecycle analysis of GHG emissions that include manufacturing and disposal. Moreover, it is undisputed that in the near-term GHG emissions will increase emissions during construction, and in the manufacturing and transportation of the components. The FERC fails to consider any alternatives to the project that would minimize such emissions or to require that these near-term emissions be off set in any way.

## F. The Analysis of Cumulative Impacts in the DEIS Is Inadequate

A cumulative impact is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. The Ninth Circuit requires federal agencies to “catalogue” and provide useful analysis of past, present, and future projects. *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9<sup>th</sup> Cir. 1997); *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809-810 (9<sup>th</sup> Cir. 1999).

“In determining whether a proposed action will significantly impact the human environment, the agency must consider ‘[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.’ 40 C.F.R. § 1508.27(b)(7).” *Oregon Natural Resources Council v. BLM*, 470 F.3d 818, 822-823 (9<sup>th</sup> Cir. 2006). NEPA requires that cumulative impacts analysis provide “some quantified or detailed information,” because “[w]ithout such information, neither courts nor the public . . . can be assured that the Forest Service provided the hard look that it is required to provide.” *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1379 (9<sup>th</sup> Cir. 1998); *see also id.* (“very general” cumulative impacts information was not hard look required by NEPA). The discussion of future foreseeable actions requires more than a list of the number of acres affected, which is a necessary but not sufficient component of a NEPA analysis; the agency must also consider the actual environmental effects that can be expected from the projects on those acres. *See Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 995-96 (9<sup>th</sup> Cir. 2004) (finding that the environmental review documents “do not sufficiently identify or discuss the incremental impact that can be expected from each [project], or how those individual impacts might combine or synergistically interact with each other to affect the [] environment. As a result, they do not satisfy the requirements of the NEPA.”) Finally, cumulative analysis must be done as early in the environmental review process as possible, it is not appropriate to “defer consideration of cumulative impacts to a future date. ‘NEPA requires consideration of the potential impacts of an action *before* the action takes place.’” *Neighbors*, 137 F.3d at 1380 *quoting City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9<sup>th</sup> Cir. 1990) (emphasis in original).

The DEIS identifies many of the cumulative projects but does not meaningfully analyze the cumulative impacts to resources in the California desert from the many proposed projects (including renewable energy projects, transmission, and others). Moreover, because the initial identification and analysis of impacts is unfinished, the cumulative impacts analysis cannot be complete. For example, because the identification of potentially occurring rare plants on site is unfinished and incomplete, the cumulative impacts are also therefore inadequate.

The DEIS also fails to consider all reasonably foreseeable impacts in the context of the cumulative impacts analysis. *See Native Ecosystems Council v. Dombek, et al*, 304 F.3d 886 (9<sup>th</sup> Cir. 2002) (finding future timber sales and related forest road restriction amendments were

“reasonably foreseeable cumulative impacts”). The DEIS also fails to provide the needed analysis of how the impacts might combine or synergistically interact to affect the environment in this valley or region. See *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 995-96 (9th Cir. 2004).

The NEPA regulations also require that indirect effects including changes to land use patterns and induced growth be analyzed. “Indirect effects,” include those that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include *growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.*” 40 C.F.R. s.1508.8(b) (emphasis added). See *TOMAC v. Norton*, 240 F. Supp.2d 45, 50-52 (D.D.C. 2003) (finding NEPA review lacking where the agency failed to address secondary growth as it pertained to impacts to groundwater, prime farmland, floodplains and stormwater run-off, wetlands and wildlife and vegetation); *Friends of the Earth v. United States Army Corps of Eng’rs*, 109 F. Supp.2d 30, 43 (D.D.C. 2000) (finding NEPA required analysis of inevitable secondary development that would result from casinos, and the agency failed to adequately consider the cumulative impact of casino construction in the area); see also *Mullin v. Skinner*, 756 F. Supp. 904, 925 (E.D.N.C. 1990) (Agency enjoined from proceeding with bridge project which induced growth in island community until it prepared an adequate EIS identifying and discussing in detail the direct, indirect, and cumulative impacts of and alternatives to the proposed Project); *City of Davis v. Coleman*, 521 F.2d 661 (9th Cir. 1975) (requiring agency to prepare an EIS on effects of proposed freeway interchange on a major interstate highway in an agricultural area and to include a full analysis of both the environmental effects of the exchange itself and of the development potential that it would create).

Among the cumulative impacts to resources that have not been fully analyzed are impacts to desert tortoise, impacts to sand transport systems and down-wind Mojave fringe-toed lizard habitat, impacts to golden eagles, and impacts to water resources. The cumulative impacts to the resources of the California deserts has not been fully identified or analyzed, and mitigation measures have not been fully analyzed as well.

#### **G. The EIS’ Alternatives Analysis is Inadequate**

NEPA requires that an EIS contain a discussion of the “alternatives to the proposed action.” 42 U.S.C. §§ 4332(C)(iii),(E). The discussion of alternatives is at “the heart” of the NEPA process, and is intended to provide a “clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. §1502.14; *Idaho Sporting Congress*, 222 F.3d at 567 (compliance with NEPA’s procedures “is not an end in itself . . . [but] it is through NEPA’s action forcing procedures that the sweeping policy goals announced in § 101 of NEPA are realized.”) (internal citations omitted). NEPA’s regulations and Ninth Circuit case law require the agency to “rigorously explore” and objectively evaluate “all reasonable alternatives.” 40 C.F.R. § 1502.14(a) (emphasis added); *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 Fed. Appx. 440, 442 (9th Cir. 2007). “The purpose of NEPA’s alternatives requirement is to ensure agencies do not undertake projects “without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same

result by entirely different means.” *Envtl. Defense Fund, Inc. v. U.S. Army Corps of Engrs.*, 492 F.2d 1123, 1135 (5th Cir. 1974). An agency will be found in compliance with NEPA only when “all reasonable alternatives have been considered and an appropriate explanation is provided as to why an alternative was eliminated.” *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1246 (9th Cir. 2005); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-1229 (9th Cir. 1988). The courts, in the Ninth Circuit as elsewhere, have consistently held that an agency’s failure to consider a reasonable alternative is fatal to an agency’s NEPA analysis. *See, e.g., Idaho Conserv. League v. Mumma*, 956 F.2d 1508, 1519-20 (9th Cir. 1992) (“The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate.”).

If the FERC rejects an alternative from consideration, it must explain why a particular option is not feasible and was therefore eliminated from further consideration. The courts will scrutinize this explanation to ensure that the reasons given are adequately supported by the record. *See Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813-15 (9th Cir. 1999); *Idaho Conserv. League*, 956 F.2d at 1522 (while agencies can use criteria to determine which options to fully evaluate, those criteria are subject to judicial review); *Citizens for a Better Henderson*, 768 F.2d at 1057.

Here, FERC too narrowly construed the project purpose and need such that the DEIS did not consider an adequate range of alternatives to the proposed project. The alternatives analysis is inadequate because it only includes 3 alternatives – the no action alternative, the applicant’s alternative and the staff’s alternative. Additional feasible alternatives should be considered which would avoid all of occupied desert tortoise habitat as well as alternatives that would have looked at alternative sites for the substation to avoid impacts to the DWMA and critical habitat. Other alternatives should have considered alternative types of energy that would provide the same and/or more efficient amounts of energy. The FERC should have also looked alternative siting closer to the site of energy consumption that would have reduced the impacts associated transmission line gen-tie, the new substation and transmission.

The FERC failed to consider any alternatives that would significantly reduce the impacts to biological resources including occupied desert tortoise habitat, key movement corridors, golden eagles, sand transport corridors and others. Because such alternatives are feasible, on this basis and other the range of alternatives is inadequate. The Center urges the FERC to revise the DEIS to adequately address a range of feasible alternatives and other issues detailed above and then to re-circulate a revised or supplemental DEIS for public comment.

Alternative measures in the alternatives analysis could include community projects for training and implementation of conservation measures such as increased insulation, sealing and caulking, and new windows for older buildings and new or improved technologies for accomplishing these important goals and reducing the need for additional electricity. For example, air conditioning creates the largest demand for energy during peak times and there already exist methods to reduce the energy use from air conditioning but implementation has lagged well behind technology. Conservation and efficiency measures are an excellent and quick way of reducing demand in both the short- and long-term and reduce the need for additional power sources. In addition, many of the existing conservation and efficiency measures can

provide immediate jobs and training in high population areas with significant unemployment (particularly among low skilled workers and youth).

The existence of these and other feasible but unexplored alternatives shows that the FERC's analysis of alternatives in the DEIS is inadequate.

### **III. Conclusion**

Thank you for your consideration of these comments. In light of the many omissions in the environmental review to date, we urge the FERC to revise and re-circulate the DEIS or prepare a supplemental DEIS before making any decision regarding the proposed project. In the event that FERC chooses not to revise the DEIS and provide adequate analysis, the FERC should reject the proposed project. Please feel free to contact us if you have any questions about these comments or the documents provided.

Sincerely,



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12/28/2015

Greg Miller, Deputy District Manager

California Desert District Office

Bureau of Land Management

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Via Email: [blm\\_ca\\_eagle\\_mountain\\_pumped\\_storage\\_project@blm.gov](mailto:blm_ca_eagle_mountain_pumped_storage_project@blm.gov); [gmler@blm.gov](mailto:gmler@blm.gov)

Dear Mr. Miller;

This letter, submitted by Defenders of Wildlife, responds to the Bureau of Land Management (BLM) invitation to submit scoping comments to assist BLM in identifying issues that should be analyzed in an environmental assessment (EA) for certain proposed facilities on public land associated with the Eagle Mountain Pumped Storage Project (Eagle Mountain Project). These proposed facilities on public land are a 12 mile transmission and gen-tie line, and a water pipeline of unspecified length. The Eagle Mountain Project was licensed by the Federal Energy Regulatory Commission on June 19, 2014.

Defenders is a non-profit national environmental organization with 1.2 million members and supporters nationally, including 170,000 in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, we employ science, public education and participation, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, associated loss of biological diversity, and habitat alteration and destruction.

The proposed transmission and gen-tie lines, and the water pipeline would be authorized by BLM through a right of way grant involving approximately 676 acres of public land in the western portion of the Chuckwalla Valley within the California Desert Conservation Area. BLM proposes to analyze the environmental consequences of granting a right of way for the proposed facilities through an Environmental Assessment (EA) which would be tiered to the Final Environmental Impact Statement (FEIS) issued by FERC in 2014 for the Eagle Mountain Project.

The issues we recommend BLM address in the EA are as follows:

1. **Tiering to the 2014 FERC FEIS:** The purpose of an EA is to inform the action agency if the environmental effects or consequences of an action would be significant, thus necessitating the preparation of an Environmental Impact Statement or EIS. Defenders considers BLM's proposed action as one related to or connected with the overall Eagle Mountain Project. Absent the BLM's approval of a right of way for the transmission and gen-tie lines and water pipeline, the Eagle Mountain Project would not be feasible. It appears BLM shares this view because it intends to tier to the FERC FEIS, which was intended to analyze the environmental effects of the entire Eagle Mountain Project.

The FERC FEIS for the Eagle Mountain Project was determined to be faulty and in violation of the National Environmental Policy Act (NEPA) and other environmental laws by the Pacific Southwest

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Regional Office of the Solicitor of the Department of the Interior as documented in its July 21, 2014 request for a rehearing and a stay of the FERC Order granting a license for the construction, operation and decommissioning of the Eagle Mountain Project. The DOI rehearing request was based primarily on the issue that the FERC FEIS for the Eagle Mountain project failed to adequately analyze impacts to various natural resources associated with Joshua Tree National Park, and that a decision on the project should be postponed until a new NEPA analysis is completed that “takes a hard look at the effects of the Eagle Crest Project.” DOI rehearing and license stay request, p. 3.

DOI identified many deficiencies in the FERC FEIS, which we incorporate by reference into this issue scoping letter.

**Recommendation:** BLM should address all the deficiencies identified by the DOI in its rehearing and stay of the license for the Eagle Mountain Project in a supplemental EIS rather than an EA. Since the NEPA deficiencies were in the FEIS, the only way they can be rectified is through an analysis at the same level of intensity or an EIS. It would be inappropriate for BLM to rely on or adopt the FERC FEIS, through tiering, when its parent agency, the DOI, found it to have serious, legal deficiencies. Doing so could render BLM’s analysis equally deficient under NEPA.

**2. Affected environment and environmental consequences:** The FERC FEIS is deficient, in part, because of lack of access to the central area of the Eagle Mountain Project during the data gathering phase of the analysis. This lack of access prevented FERC from obtaining current data based on ground surveys for special status species such as the desert tortoise and bighorn sheep. Instead, it relied on existing data from the 1990s associated with another FEIS for the proposed Eagle Mountain landfill project. The DOI, in its formal request for a rehearing and stay of the FERC order granting the license for the project, described this issue as one of FERC relying on “stale data” in developing its analysis. BLM has an opportunity to correct this problem by gathering information on desert tortoises and bighorn sheep in the central project area because the applicant, Eagle Crest, now has legal access to that area.

**Recommendation:** BLM should obtain permission to access the central project area and gather current information on the occurrence and use of the area by desert tortoises and bighorn sheep. This would enable BLM to address the information and analysis deficiency in the FERC FEIS and update the affected environment and environmental consequences chapters of the analysis. These deficiencies are described in detail in the DOI rehearing request letter.

**3. Groundwater in the Chuckwalla Valley:** The long and short term impacts to groundwater in the Chuckwalla Valley as a result of the Eagle Mountain Project, and in combination with all other groundwater uses, is an issue BLM should analyze very carefully. BLM expressed concern over short and long term impacts to groundwater in its comments to FERC on the Draft EIS for the Eagle Mountain Project. The concern was not limited to long-term lowering the groundwater elevation in the valley, but also to potential lowering or curtailing of groundwater flow to the Colorado River from the Chuckwalla Valley groundwater basin. Although FERC generally disagreed with BLM’s analysis and comments, the issue remains relevant, and BLM now has the opportunity to more fully and objectively evaluate groundwater impacts and mitigation measures.

In its FEIS, FERC also dismissed analyzing the potential effects of climate change on groundwater in the Chuckwalla Valley because it claimed that the science of the effects of climate change on various resources, including groundwater, is inconclusive and speculative.

**Recommendation:** We recommend the BLM analyze the short and long term effects of the Eagle Mountain Project, in combination with all other groundwater use activities in the Chuckwalla Valley. This should be done independent of the FERC FEIS findings, and should be based on a collaborative effort involving BLM, the National Park Service, U.S. Geological Survey and the State Department of Water Resources. We also recommend that BLM undertake an independent review of the anticipated effects of climate change on precipitation and groundwater recharge in the Mojave and Sonoran Desert regions using the most recent scientific, peer-reviewed publications and articles. This is especially important given FERC's position that predicting future conditions that may occur as a result of climate change would be too speculative.

**4. Effects on proposed conservation designations in BLM's Proposed Desert Renewable Energy Conservation Plan (DRECP)/Land Use Plan Amendment (LUPA):** In November 2015 BLM released its Proposed LUPA to implement the provisions of the DRECP on public lands. Public lands within the Eagle Mountain Project area are proposed for various management designations according to alternative. Under most of the alternatives under consideration and analyzed in the FEIS, these public lands are proposed for conservation through designation as an Area of Critical Environmental Concern and, or National Landscape Conservation Lands.

**Recommendation:** BLM should analyze the effects of the transmission and gen-tie line, water pipeline and the overall Eagle Mountain Project on the conservation designations it makes in the final decisions on the DRECP LUPA. These designations will apply to public lands surrounding the Eagle Mountain Project, which may adversely impact public land resources including habitat for desert tortoises and bighorn sheep. BLM should not make a decision on the proposed right of way project until it reaches a final decision on the DRECP LUPA. The extensive public land resources information contained in the FEIS for the DRECP LUPA should be used as a new source of information on the resources that would be affected by the Eagle Mountain Project and for preparing a supplemental EIS.

**5. Effects on the boundary adjustment review project for Joshua Tree National Park:** In the summer of 2015, the National Park Service (NPS) began a feasibility study regarding options for modifying the boundary of Joshua Tree National Park in the Eagle Mountain area. The study includes evaluating various boundary alternatives and the potential transfer of public lands to Joshua Tree National Park. Those lands do not include any privately owned land within the Eagle Mountain Study Area, but do include substantial amounts of public land administered by BLM.

The study area for the park boundary modification includes approximately 32,000 acres of varying ownerships that include about 22,000 acres of public lands under BLM management. The park boundary study and any future decision to modify the boundary would not affect valid existing rights associated with public lands or rights on non-federal land, including private lands affected by the FERC license for the Eagle Mountain Project. The boundary study and final outcome would also not prevent a non-federal entity from donating or selling its interests to support the expansion of Joshua Tree National Park in the future. The NPS boundary study is scheduled to be completed in the summer of 2016.

**Recommendation:** BLM should address the effects of the transmission and gen-tie, water pipeline and the overall Eagle Mountain Project on options for adjusting the boundary of Joshua Tree National Park, and coordinate closely with the National Park Service in developing the effects analysis. The final analysis should be timed to incorporate the final NPS boundary study recommendation which is expected to be completed in mid-2016. BLM's decision on the right of way for the Eagle Mountain Project should not adversely impact or be inconsistent with the NPS boundary modification recommendation. For additional information see: <http://www.nps.gov/jotr/learn/news/boundarystudyeaglemountain.htm>

This concludes Defenders scoping comments on the Eagle Mountain Project. Please contact me if you have questions or would like to discuss any specific issue in greater detail.

Sincerely,



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“Don’t Waste Our Desert”

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RE: Comments on the Notice of Intent (“NOI”) to amend the Resource Management Plan for the California Desert Conservation Area and Prepare an Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California

December 26, 2015

Dear Mr. Miller,

These comments are submitted on behalf of Donna & Larry Charpied, and the Desert Protection Society.

Donna & Larry Charpied (“Charpieds”) have lived and farmed jojoba (a renewable resource) in Eagle Mountain/Desert Center for over 30 years, and have actively participated in the decision making process for proposals that include, but are not limited to water storage projects, power generating projects, questionable land use issues, and other projects that have the potential to harm desert communities and the environment in and around Joshua Tree National Park

(“JoTr”). We spearheaded the opposition and were successful litigants against the proposed Eagle Mountain dump project, (a case that spanned 25 years), that was denied after the United States Supreme Court refused to hear the polluter’s case. On December 18, 2014, the District Court issued its Final (AWESOME) Ruling in Plaintiff’s favor. The successful litigation on Eagle Mountain incurred a huge public benefit by preventing 20,000 tons of garbage daily for 117 years to be deposited in our community and nestled in the arms of JoTr.

The Desert Protection Society (“DPS”) is a 501(c) (3) organization (formerly known as Citizens for the Chuckwalla Valley [“CCV”]), made up of residents of Eagle Mountain/Desert Center, Native Americans, local environmental activists from San Bernardino, Imperial, San Diego, Riverside Counties, and Nevada. DPS was formed in 1990 to prevent the World’s largest garbage dump from being built across the street from the Eagle Mountain elementary school, and on the doorstep of Joshua Tree National

Park. We have since expanded our mission to include other potentially damaging proposals and actively participate in the decision making process for proposals that include, but are not limited to water storage projects, power generating projects, questionable land use issues, and other projects that have the potential to harm desert communities and the environment in and around Joshua Tree National Park. DPS was a co-litigant with the Charpiéd's on the dump case.

**Environmental Justice:** The DEIR claims that there are no environmental justice violations, we could not disagree more! We submitted environmental justice comments to the proposed projects slated for our tiny community(s) of Eagle Mountain/Desert Center, and feel that nobody read them, so we resubmit and request justifying the claim, that no violation is occurring.

*Environmental Justice is ...the confluence of social and environmental movements, which deals with the inequitable environmental burden born by groups such as racial minorities, women, poor, or residents of rural areas and developing nations. It is a holistic effort that seeks to analyze and overcome the power structures that have targeted these groups and thwarted environmental reforms. Environmental justice proponents generally view the environment as encompassing 'where we live, work, and play' (sometimes adding learn and pray). The movement seeks to redress inequitable distributions of environmental burdens (pollution, industrial facilities, crime, etc.) and access to environmental goods (nutritious food, clean air & water, parks, recreation, health care, education, transportation, safe jobs, etc.) in a variety of situations.*

In 1984, a report by Cerrell and Associates, commissioned by the California Waste Management Board outlined the communities most vulnerable and therefore easiest to site polluting facilities near, outlined those communities we refer to as Environmental Justice Communities. The report suggested that the Waste Board should... "target communities with less than 25,000 people, and where the residents are old, poor, politically conservative and Roman Catholic." That description certainly applies to the Eagle Mountain, Desert Center, and Lake Tamarisk communities where this project is proposed. The report goes on to state, "All socioeconomic groupings tend to resent the nearby siting of major facilities, but the middle and upper socioeconomic strata possess better resources to effectuate their opposition."

For previous environmental documents to cite meetings and scoping sessions to satisfy there are no environmental justice violations is unsatisfactory. The meetings usually have taken place during work hours, or held over 50 miles from the "host" community. There is absolutely zero information on the makeup of our community, which is mainly retired or employed people making below poverty wages. It appears the addressing of the EJ element only serves to sweep a stubborn problem under the rug, a clear violation of CEQA. One environmental document for the project even talks about a field trip to the area. We bring this up as a way to illustrate that environmental documentataion thus far makes conclusions not based on facts. There may have been a field trip, however the participants had to stand on Kaiser Road and look off into the distance where th proposed project would be built. This "drive-by" field trip would not yield any information that a conclusion may be based upon. This project is rife with such examples.

From 1987 until present, residents, desert activists, grassroots organizations, and national environmental organizations worked together to prevent the world's largest garbage dump from being built at the defunct Kaiser iron ore mine at Eagle Mountain. The same area as the Project. The plan was to transport and deposit 20,000 tons of garbage from Los Angeles to Eagle Mountain on trains and trucks for the next 117 years. This project had been mired in litigation. On September 20, 2005 Federal District Judge Robert Timlin ruled in favor of environmentalists, however the Government and the Polluters

appealed the decision to the 9<sup>th</sup> Circuit Court of Appeals. The case was heard December 6, 2007 and on November 10, 2009 the 9th Circuit ruled in environmentalists' favor. The polluters requested *en banc* review of the 9th Circuit, was denied July 30, 2010, unsuccessfully they petitioned the U.S. Supreme Court, and on December 18<sup>th</sup>, the dump was dumped by the Federal District Court.

As you know, the Eagle Crest Energy Company ("ECEC") intends to utilize the Eagle Mountain mine site to produce electricity. The plan is to pump ground water from designated water wells in the Chuckwalla Valley to the massive east pit at Kaiser's old mine to be stored until low peak energy times when the water will be pumped to Kaiser's Central Pit. When electricity demands are at peak times, the water in the central pit is released through monstrous underground tunnels heading to the east pit, where very large underground turbines will spin, creating electricity. The initial filling of the east pit will require 9 billion gallons of water, and take two to four years of constant pumping to fill. This project will exacerbate the aquifer's overdraw condition to depletion. Preliminary studies conducted in the past indicate that there will be significant environmental impacts to the local community as well as the Park. Citizens have voiced strong concerns with the Project's potential impacts to the environment and the local residents who depend on the desert's natural resources. This project proclaimed as "green energy", **will actually use more energy than it creates, defying logic.**

**Background:** Eagle Crest Energy's ("ECE") hydro project would consist of: (1) a 191 - acre upper reservoir impounded by two diversion dams with a total storage capacity of 20,000 acre-feet; (2) an 163 - acre lower reservoir with a total storage capacity of 21,900 acre-feet; (3) an upper reservoir spillway channel about 4000 feet long; (4) a 14,000-foot-long section of Eagle Creek; (5) an upper reservoir intake structure; (6) 29-foot-diameter by 4,000 - foot - long low pressure upper tunnel; (7) a surge tank with a 33 - foot diameter by 1,348 - foot - long tunnel shaft; (8) a 29 - foot-diameter by 1,560 - foot - long high pressure lower tunnel; (9) a 33 - foot-diameter by 6,835-foot - long tailrace tunnel; (10) a 72-foot wide, 130 - foot - high, and 360 - foot - long underground powerhouse; (11) four reversible pump turbine units at 325 megawatts each, for a total installed capacity of 1,300 megawatts; (12) a 28 - foot - wide, 28 - foot - high, by 6,625-foot-long access tunnel to the underground powerhouse; (13) a lower reservoir inlet structure; (14) a site near the switchyard for the reverse osmosis system; (15) a desalination area; **(16) a buried water supply pipeline ranging from 12 - to 24 - inch diameter totaling 15.3 miles; (17) a 13.5 - mile - long, 500-kilovolt transmission line connecting to a new Interconnection Collector Substation;** (18) many miles of permanent construction and access roads; (19) staging, storage, and administration areas near the switchyard; and (20) appurtenant facilities. The average annual generation is estimated to be 22.2 gigawatt-hours. Joshua Tree National Park encompasses this project on three sides, and is located approximately 1.5 miles north of, 2 miles south of, and 5 miles west of the project footprint.

**BLM Responsibilities:** BLM's management of the CDCA must conform to FLPMA's land use planning and public interest prescriptions including the CDCA Plan, as well as NEPA. Eagle Crest will violate FLPMA standards protecting groundwater and imperiled wildlife. For this and other reasons, BLM needs to conduct a full-blown Environmental Impact Statement ("EIS") as opposed to a mere "check off list" of impacts that go unstudied. Further, the impacts from the proposed pump storage project on water resources and habitats were not adequately assessed in the earlier EIS for the proposed pump storage project alone (which was improperly segmented). Therefore, BLM must consider the whole of the project, the ROW and the proposed pump storage project, in a new EIS.

Approving this project defies logic. California is currently experiencing its worst drought in history. This project has a very real potential of destroying all life in the Chuckwalla Valley due to excessive water extraction.

**Water Resources:** Something must be in place to protect private well owners in the area. Desert Sunlight quarterly monitors 4 wells on the Charpiéd's property since 2011. Three monitoring wells installed by ECE in the 1990's, and an irrigation well. During the construction phase of the Desert Sunlight project, the water wells on the Charpiéd property dropped one foot. Desert Sunlight consumed a little over 1,500 acre feet during construction. ECE proposes to consume over 1,500 acre feet of water in **make up water every year**. When considering the subject project, Desert Sunlight, proposed Palin project, approved Desert Harvest, and other approved and foreseeable projects in this small area, water loss becomes increasingly significant. Charpiéd's have only about 40 feet until reaching the bottom of their well. Once the table drops that low, we are out of water and business – The Charpiéd's have owned and operated a certified organic jojoba farm, north of your proposed project for 34 years. Despite the fact permission was granted to Egel Crest to drill three monitoring wells on the Charpiéd property, the company refuses to monitor the water levels in those wells. BLM needs to direct ECE to begin monitoring of these wells immediately to provide a baseline, and continue monitoring on a quarterly basis for the life of the project.

DPS anticipates that excessive pumping will lower the water table to the point that plants' roots will no longer be able to access water. First small plants will not be able to survive, then as the table lowers, ironwoods, smoketrees, palo verde, and creosote will eventually die leaving a denuded desert and a PM10 problem that currently does not exist in the Upper Chuckwalla Valley. This adds to eutrophication of the desert described below. Residents are also concerned about exposing arsenic that naturally occurs in desert soils, by denuding the desert.

Researchers are finding that the desert is sucking up carbon at rates they never imagined:

“...Researchers have found that Nevada's Mojave Desert, square meter for square meter, absorbs about the same amount of CO<sub>2</sub> as some temperate forests. The two sets of findings suggest that deserts are unsung players in the global carbon cycle. "Deserts are a larger sink for carbon dioxide than had previously been assumed," says Lynn Fenstermaker, a remote sensing ecologist at the Desert Research Institute (DRI) in Las Vegas, Nevada, and a coauthor of a paper on the Mojave findings published online last April in *Global Change Biology*.

The effect could be huge: About 35% of Earth's land surface, or 5.2 billion hectares, is desert and semiarid ecosystems. If the Mojave readings represent an average CO<sub>2</sub> uptake, then deserts and semiarid regions may be absorbing up to 5.2 billion tons of carbon a year--roughly half the amount emitted globally by burning fossil fuels, says John "Jay" Arnone, an ecologist in DRI's Reno lab and a co-author of the Mojave paper...”. (Science 13 June 2008: Vol. 320. no. 5882, pp. 1409 – 1410 DOI: 10.1126/science.320.5882.1409).

As BLM is well aware, the California Desert Protection Act (“CDPA”) expressly reserved water rights for wilderness areas that were created under the act. The CDPA reserved sufficient water to fulfill the purposes of the Act which include to “preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes,” “perpetuate in their natural state significant and diverse ecosystems of the California desert,” and “retain and enhance opportunities for scientific research in undisturbed ecosystems.” 103 P.L. 433, Sec. 2. The priority date of such reserved water rights is 1994 when the CDPA was enacted. Therefore, at minimum, the BLM must ensure that use of water for the proposed project (and cumulative projects) *over the life of the proposed projects* will not impair those

values in the wilderness that depend on water resources (including perennial, seasonal, and ephemeral creeks, springs and seeps as well as any riparian dependent plants and wildlife). involve somewhat complex legal issues, at minimum, the BLM must address this question and to either require the project proponent to agree that no water rights will be created or to otherwise ensure that any water rights that could *arguably* be created will be conveyed back to the BLM owner and run with the land at the end of the proposed project ROW term. The BLM must provide a mechanism to insure that in no case will the use of water for the proposed project on these public lands result in water rights accruing to the project applicant that it could arguably convey to any third party. Therefore, any water rights *arguably* created by groundwater pumping and conveying on these public lands for the proposed project must not ultimately accrue to any third party for use *off-site or on-site* in the future for any other project. Moreover, BLM should ensure that the applicant will not use the groundwater associated with the project off-site for any purpose.

The United States Geological Survey (“USGS”) conducted a study in the Chuckwalla Valley, Groundwater Ambient Monitoring Analyzing or “GAMA”, which provided age dating for the area. In a personal conversation with Mr. Michael Wright, USGS, we learned that they examined wells in Desert Center and determined the water is “very, very old”, thousands of years old. He explained if tritium is not detected there has been no recharge for the past 50 years, which is a commonly accepted hydrological fact. Analysis in the EIS needs to include tritium analysis and C14 analysis to determine exactly how old the Chuckwalla Groundwater Basin is.

DPS anticipates that excessive pumping from the subject project, currently operating, approved, and proposed projects will lower the water table to the point that plants’ roots will no longer be able to access water. First small plants will not be able to survive, then as the table lowers, ironwoods, smoketrees, palo verde, and creosote will eventually die leaving a denuded desert and a PM10 problem that currently does not exist in the Upper Chuckwalla Valley. This adds to eutrophication of the desert described below. Residents are also concerned about exposing arsenic that naturally occurs in desert soils, by denuding the desert. There is a human health consequence from denuding the desert. Arsenic occurs naturally in desert soils, but pose no risk *unless it is disturbed*. Denuding the desert through excessive groundwater pumping will expose residents and wildlife to cancer causing arsenic when it becomes airborne. For example, what will be the impacts to the Palm Springs Roundtail Ground Squirrel who like to live in the sand dune/mesquite areas where the water tables are higher? They will be the first to die from the obvious drawdown of water from the proposed and present activities in the Upper Chuckwalla Valley.

**Biological Resources:** This proposed project requires a land use plan amendment to the 1980 California Desert Conservation Area (CDCA) Plan, as amended. The Energy Production and Utility Corridors section of the California Desert Conservation Area Plan (1980) as amended requires at minimum that the following resource issues be addressed:

- 1) Consistency with the Desert Plan, including designated and proposed planning corridors;
- 2) Protection of air quality;
- 3) Impact on adjacent wilderness and sensitive resources;
- 4) Visual quality;
- 5) Water source(s);
- 6) Waste disposal;
- 7) Seismic hazards; and
- 8) Regional equity.

There is a high potential that the proposed pump storage project and the proposed ROW may

adversely affect many rare plants and animals. The species and habitats include the federally and state threatened desert tortoise which is documented to occur in the area as well as the federally and state endangered Yuma Ridgway's rail and migratory birds. Because the proposed project has potential to significantly affect these protected species and habitats, the BLM should produce an Environmental Impact Statement, and cannot rely on an Environmental Assessment.

Below is not a comprehensive list of known birds and mammals who call the Chuckwalla Valley and Eagle Mountain home, or provides exquisite habitat for them. How can mitigation measures be in place for animals and habitat the BLM has not even studied much less recognize as existing? An EIS would be a good first step.

**NORTHERN HARRIER:** A California Species of Special Concern. This species is considered to occur seasonally along the proposed transmission corridor and may seasonally forage in habitat at the project site.

**SHARP-SHINNED HAWK:** A California Species of Special Concern. Likely to migrate in the vicinity of the project in the fall and spring, and may winter in any part of the project areas. The species may also seasonally forage in habitat at the project site.

**COOPER'S HAWK:** A California Species of Special Concern. Most parts of the project areas are within the year-round ranges.

**GOLDEN EAGLE:** A California Species of Special Concern. The species occur in any portion of the Eagle Mountain project area. Note: Members of DPS have observed these beauties a number times in this area.

**PEREGRINE FALCON:** Is a federal and state listed endangered species with a low to moderate probability to occur at the project site, access roads, and proposed transmission line. Members of DPS have observed in the project area.

**CALIFORNIA BLACK RAIL:** A federal Candidate 2 candidate and is state listed as threatened, occur in the project area.

**LECONTE'S THRASHER:** A federal Category 2 candidate and California Species of Special Concern, observed near Kaiser & Eagle Mountain Roads.

**CALIFORNIA LEAF-NOSED BAT:** A federal Category 2 candidate and a California Species of Special Concern who uses the Kaiser Mine as a winter roost. There have been no other winter roosts located during air searches over the Orocopia, Chuckwalla and Coxcomb Mountains.

**PALLID BAT:** A California Species of Special Concern was captured in a mist net over a mine pit pond during the 1990 surveys, and guano was found in two adits west of the project site. The species is likely to forage in areas near access roads and proposed transmission line, and it is known to forage over pond water, which forms from standing water after a rainfall in the bottom of the east pit.

**AMERICAN BADGER:** A California Species of Special Concern identified at the project site and near Kaiser Road. The species is highly likely to occur along the proposed transmission line. Members of DPS have observed this species a number of times in project areas.

**YUMA MOUNTAIN LION:** A Category 2 candidate and California Species of Special Concern. Mountain lions have been observed at the Eagle Mountain townsite, and several farms in the Desert Center/Eagle Mountain area.

**NELSON'S BIGHORN SHEEP:** A California Special Animal observed at the project site, and numerous locations in the Eagle Mountains.

### **Desert Tortoise:**

This species is federal and state listed as threatened. Tortoise have been observed in the Upper Chuckwalla Valley along the proposed R-O-W, as well as the defunct mine site. Parts of Eagle Mountain road cut through the Chuckwalla Unit of Critical Habitat for desert tortoise. The impacts to this species will occur from the construction of transmission lines and the pipeline across the Valley to the site. Ravens historically are attracted water sources and transmission lines, and ravens prey on juvenile tortoise. It is expected that predation on the desert tortoise will increase. A report by Dr. Richard Knight of the University of Colorado describes the Park's Pinto Basin as the most pristine raven - less habitat in all of the Mojave Desert. He regards Joshua Tree National Park as a unique habitat with unaltered raven densities. A cumulative impact analysis must be performed. If all of the projects proposed in the Chuckwalla Valley are given a No Jeopardy decision from US Fish & Wildlife Service with "take permits," tortoise will become extinct. Clearly every project on the books will kill tortoise.

An artificial lake environment in the desert will serve as an attractant for a variety of wildlife that require open water to survive. As these animals will certainly include known (e.g., coyotes, feral dogs) or potential (e.g., gulls) predators of the desert tortoise, the increased number of these predators may lead to heightened predation of tortoises inside and outside of the project area.

Desert tortoise habitat occurs only a short distance from the project area and it is likely that an increase in number of predators from the artificial lake will have a detrimental effect on desert tortoise numbers inside Joshua Tree National Park. Augmented populations of coyote, gulls, wild dogs and other potential predators of the desert tortoise from the project need to be addressed. Even though the proposed mitigation is to fence ponds and the reservoirs, animals will still be attracted by the smell of water and travel to the site. We suggest the creation of a desert tortoise predator control plan to address this likely increased predation pressure on the desert tortoise realized from both terrestrial and aerial predators.

We request that thorough, seasonal surveys be performed for sensitive plant species and vegetation communities, and animal species, including migratory bird activity, under the direction and supervision of the BLM and resource agencies such as the US Fish and Wildlife Service and the California Department of Fish and Wildlife before any analysis is undertaken as part of the NEPA process. Full disclosure of survey methods and results to the public and other agencies without limitations imposed by the applicant must be implemented to assure full NEPA/ESA compliance. Confidentiality agreements should not be allowed for the surveys in support of the proposed project.

We request that the vegetation maps be at a large enough scale to be useful for evaluating the impacts. Vegetation/wash habitat mapping should be at such a scale to provide an accurate accounting of wash areas and adjacent habitat types that will be directly or indirectly affected by the proposed activities. A half-acre minimum mapping unit size is recommended, such as has been used for other development

projects. Habitat classification should follow CNPS' Manual of California Vegetation (Sawyer et. al. 2009).

Adequate surveys must be implemented, not just a single season of surveys, in order to evaluate the existing on-site conditions. Due to unpredictable precipitation, desert organisms have evolved to survive in these harsh conditions and if surveys are performed at inappropriate times or year or in particularly dry years many plants that are in fact on-site may not be apparent during surveys (ex. annual and herbaceous perennial plants).

To conclude the section on biological resources, it is clear that the impacts to wildlife will range from moderate to extreme. The proposed project, if goes to fruition, will introduce a massive water source in an area water is scarce. This will inevitably create additional sources of nutrition for animals to exploit. In the desert where resources are scarce, even a small amount of enrichment is highly attractive to animals and is all that is required to alter wildlife behavior. (Personal conversation with Park ecologist). The entire ecosystem in and around the project site, and Joshua Tree National Park, will be thrown out of kilter, should this project go forward, and the proposed future energy projects in the Chuckwalla Valley will compound the impacts by reducing and fragmenting the habitat for animals to live and forage for food.

***Environmental Justice:*** The FERC EIS claims that there are no environmental justice violations, we could not disagree more! We submitted environmental justice comments to the proposed projects slated for our tiny community(s) of Eagle Mountain/Desert Center, and feel that nobody read them, so we resubmit and request justifying the claim, that no violation is occurring.

*Environmental Justice is ...the confluence of social and environmental movements, which deals with the inequitable environmental burden born by groups such as racial minorities, women, poor, or residents of rural areas and developing nations. It is a holistic effort that seeks to analyze and overcome the power structures that have targeted these groups and thwarted environmental reforms. Environmental justice proponents generally view the environment as encompassing 'where we live, work, and play' (sometimes adding learn and pray). The movement seeks to redress inequitable distributions of environmental burdens (pollution, industrial facilities, crime, etc.) and access to environmental goods (nutritious food, clean air & water, parks, recreation, health care, education, transportation, safe jobs, etc.) in a variety of situations.*

In 1984, a report by Cerrell and Associates, commissioned by the California Waste Management Board outlined the communities most vulnerable and therefore easiest to site polluting facilities near, outlined those communities we refer to as Environmental Justice Communities. The report suggested that the Waste Board should... "target communities with less than 25,000 people, and where the residents are old, poor, politically conservative and Roman Catholic." That description certainly applies to the Eagle Mountain, Desert Center, and Lake Tamarisk communities where this project is proposed. The report goes on to state, "All socioeconomic groupings tend to resent the nearby siting of major facilities, but the middle and upper socioeconomic strata possess better resources to effectuate their opposition."

FERC siting meetings and scoping sessions to satisfy there are no environmental justice violations is unsatisfactory. The meetings usually have taken place during work hours, or held over 50 miles from the "host" community. There is absolutely zero information on the makeup of our community, which is mainly retired or employed people making below poverty wages. The EJ element must analyzed in the EIS. It appears that not addressing the EJ element only serves to sweep a stubborn problem under the rug, a clear violation of NEPA.

**Transmission Lines:** Why are new transmission lines being proposed when they already exist from Eagle Mountain to the I-10 corridor? The transmission lines are proposed in an area with a high tortoise population. What will the impact to the tortoise be with new miles of raven and perches being erected for the Project? Why not place the transmission lines under ground?

It appears that the lines will run along the Old Kaiser Truck Road. The scenery around this area is pristine desert. With the exception of Kaiser's dilapidated rail line, there is a vast expanse with vistas to Joshua Tree National Park Wilderness. It appears the lines will cut across Victory Pass and run along the boundary of Joshua Tree National Park. How will that affect the Wilderness experience for a visitor trying to escape the eye pollution of the city? Why propose these lines so close to the Park's Wilderness, when a corridor already exists?



There needs to be a complete analysis of how much carbon will not be absorbed due to denuding the desert from pumping, and how much carbon will be added to the environment from the necessary transmission lines? To wit:

On April 17th, the Environmental Protection Agency released a list of the top 5 toxic gases being emitted that "endanger public health and welfare". One of these gases is sulfur hexafluoride, also known as SF6. Here is what the EPA says about SF6:

"With a global warming potential 23,900 times greater than CO2 and an atmospheric life of 3,200 years, one pound of SF6 has the same global warming impact of 11 tons of CO2."

As it turns out, the most common use for SF6 worldwide is as an insulator in high voltage equipment that transmits electricity!

**Eutrophication:** Derived from the field of limnology, eutrophication means "an addition of nutrients" and is derived from the Greek word "eutrophos" meaning "well-nourished." Our concern was the addition of trash to the desert constituting "eutrophication."

In lakes and streams the term refers to addition of a substance which would otherwise limit growth, typically phosphorus (found in detergents) or nitrogen (as in agricultural run-off rich in fertilizer). Freed from the limit of this ingredient plants first and then animals start using the food to grow and reproduce. Enormous numbers of living organisms (e.g., algae) quickly use up all the available oxygen required for metabolism (of both plants and animals). This causes the now-huge population to die. The dead bodies of these organisms now provide yet another wind-fall food source for yet another set of organisms, the decomposers and anaerobic bacteria. These organisms now grow enormously numerous creating the foul odors and putrid conditions associated with decay and anaerobic metabolism. Such is an example of "eutrophication" in a lake or stream.

Human-caused (anthropogenic) eutrophication has been a blight on our fresh waters since the 19th century when industry and commercial agriculture began to have far-reaching effects on natural ecosystems. It wasn't until pioneering work of D. Schindler and other limnologists in the early 1970's that the precise cause and sequence of events in human eutrophication was established. (Vallentyne 1974).

To the extent that a lake will be created by the proposed pumped storage facility at Eagle Mountain, lake eutrophication induced by nearby trash is possible.

**Greenhouse Gas:** This project is being discussed as if we are to assume that it will in fact be a source of renewable energy which will have the overall effect of reducing the generation of CO<sub>2</sub>. We choose just one of a large collection of “green” statements from FERC’s EIS: “Greenhouse Gas (GHG) Emissions – Construction may affect GHG levels, however, operational activities would displace energy demand for single cycle natural gas power plants and if effectively used would reduce GHG emissions necessary for meeting the energy demands in California and assist meeting future targets for a larger portfolio of renewable power generation sources.”

There are many other statements about what this project “can” do to reduce GHG emissions. In the above quote we note the phrase “if effectively used”, we prefer the phrase “this project is contractually obligated to.....” and in other places we prefer “will...” rather than “can...”.

We have the general idea that this project will pay off its debt and produce profit by purchasing inexpensive (mostly night time) power and selling it at a higher price (mostly at peak day time demand). However, given no constraints the owners will buy the cheapest power available. This could well turn out to be coal fired power.

Coal power is rated as the most GHG producing power. The national effort to reduce GHG therefore translates into an effort to reduce coal fired power. In a normal economic situation this means that coal baseline generators will sell night time power at a deep discount. This project could well buy all of its pumping power from coal generators and sell it in competition with peak renewable sources. It could just as well be a GHG disaster as otherwise.

Project’s owners states that there is 359 MW of wind generation in the local area. How much of that is already committed to long term contracts? We assume that even with that full capability there will be the need to purchase nearly 1000MW of carbon based pumping power. When coupled with pumping inefficiencies as well as double transmission losses (pumping/generation) this project has a carbon multiplying effect (higher carbon production for power used at the load).

Given the operational generality we just mentioned, any discussion of solar energy as a source of pumping power is misleading. Solar is inherently a peak generator which will be sold at a premium, it is hardly a low cost source of pumping power and till proven otherwise we assume that discussions of solar pumping power is a “greenwashing” red herring.

We want to know how power from this project will be counted. Given the possibility of a pumping power mix it might end up attempting to sell all of its generation as renewable power.

Before we are willing to consider this as a project which will help us to reach renewable, low carbon goals we need to see a more detailed analysis of the market and some contractually binding or permit binding conditions on the minimum amount of renewable pumping power and maximum amount of carbon generation taking into account efficiency and transmission losses. Until then we will consider this a profit making carbon generator.

In general we find too many assumptions about how the plant will operate with no real analysis that we can count on. What are the actual sources of pumping power in the real world of the southern

California grid and what types of power will this plant compete with – we expect data not speculation! Until we get real world data rather than hypothetical scenarios we will object to this project's potential to worsen rather than correct carbon generation. With this assumption (rather than self serving speculation) we insist that the No Project Alternative is the preferred alternative. In this regard any statement of over-riding considerations necessary to address irreversible significant effects must be based on fact.

**Alternatives:** The EIS must include a robust analysis of alternatives, including a no action alternative that denies the application for a ROW due to significant and immitigable impacts from the proposed project as a whole on desert resources including Joshua Tree National Park and other public lands. The EIS must also consider a private lands alternative and alternatives that eliminate impacts to wildlife through subsurface transmission lines. The stated objectives of the proposed project must not unreasonably constrain the range of feasible alternatives evaluated in the EIS. The BLM must establish an independent set of objectives that do not unreasonably limit the EIS's analysis of feasible alternatives including alternative sites and alternative methods of storing energy.

**Give It Back! Campaign:** The site of the proposed project is currently surrounded on three sides by Joshua Tree National Park and the location was originally part of Joshua Tree National Monument. The abandoned Kaiser mine and other lands in the Eagle Mountains comprising a total of 29,775 acres should be restored to Joshua Tree National Park. To that end the Desert Protection Society launched the Give It Back! Campaign. The DPS and other conservation groups have long advocated for these lands to be re-annexed back into the Park boundaries and the National Park Service is currently studying a Park Service boundary adjustment in this very area. That ongoing process must be coordinated with this BLM NEPA process as both proposals concern the same lands and resources. DPS's scoping comments to the Boundary Study are referenced here and attached to these comments.

This campaign is the answer to the economic blight the local community of Eagle Mountain and Desert Center have lived with since Kaiser Steel went bankrupt in 1983. The vision we have for the community is far different than the vision of our elected officials and developers. We look at the old mine and see a historical site. We look at the boarded up houses and see wilderness huts.

The campaign is petitioning members of Congress, and local and state legislators to authorize the 29,775 acres of land, once part of the park but set aside by Congress in the 1950s for mineral exploration, to be returned to the National Park Service. Activists are concerned that the development of the hydro project proposed on these lands, would be detrimental to the health of the community and the national park. The campaign proposes instead that the land be managed by the Park Service to attract tourism to the area.

Returning the land is not only important for protecting the park, it is called for by law. The first law, a Congressional Act of 1950, Public Law 837 ("PL 837"), omitted 265,340 acres from Joshua Tree National Monument for mineral extraction. Prior to omitting the land, the President of the United States ordered the land surveyed to "determine to what extent said area is more valuable for minerals than for National Monument purposes...". An explicit provision in PL 837 states if the land is not used for mineral purposes it should be returned to Joshua Tree.

In an attempt at fairness, lets discuss Kaiser. They have had a difficult time at best with the mine. First bankruptcy that put an ended to an era of mining for the Henry J. Kaiser iron ore mine. Then they unsuccessfully tried for nearly 25 years to acquire lands and a permit to build the world's largest garbage dump. The illegal sale of the property to Eagle Crest will be challenged. But is it fair to not make Kaiser whole again? We heard unsubstantiated rumors that Kaiser sold said lands to Eagle Crest for \$20,000,000 (twenty million) dollars. Conservationists will gladly raise that money to buy the subject lands from Kaiser and provide them to JOTR. The EIS need to analyze that possibility.

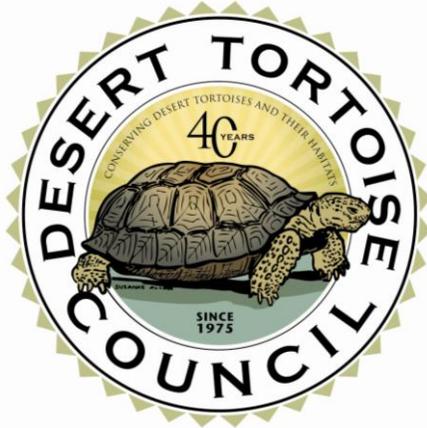
Lastly, we incorporate the comments submitted by the Center for Biological Diversity and Basin and Range Watch as though fully incorporated herein.

In conclusion, the Chuckwalla Valley from Desert Center to Blythe is earmarked for massive solar development. Approximately 120,000 acres of open space will be clear cut of all vegetation and animals. The scales of industrialization and conservation must be balanced. We have a ripe opportunity to do just that. Simply GIVE IT BACK !

Respectfully Submitted,

*Donna Charpied* Executive Director DPS for,  
Self  
Larry Charpied  
Desert Protection Society

Attachments:  
Comments to JOTR Boundary Study.



**DESERT TORTOISE COUNCIL**

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28 December 2015

**Via email only**

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RE: Scoping comments for Eagle Crest Pumped Storage Project in Riverside County

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

We see in the recent news release (CA-CDD-15-51) that limited information is given regarding the site location for the transmission line; only that there will be "approximately 12 miles of transmission and gen-tie line for the transmission of energy associated with the Eagle Crest Pumped Storage Project" that the "project area is approximately 30 miles west of Blythe, California, and ranging from 5 miles north of Interstate 10 at Desert Center, crossing the interstate from north to south and terminating at the Southern California Edison Red Bluff substation." We appreciate this opportunity to provide scoping comments on the above-referenced project, which follow.

1. First, it is not clear from the news release if there are any alternate corridors available to connect the facility with the Red Bluff substation. Since all areas south of Interstate 10 in this area were designated as desert tortoise critical habitat by the U.S. Fish and Wildlife Service (USFWS 1994), we feel strongly that a minimum of three alternative corridors must be surveyed to see which one(s) would result in the fewest impacts to tortoises and smallest impacted area of critical habitat. We strongly recommend that the transmission corridor follow existing route(s) and that no new roads are created. Surveys of all alternatives must conform to USFWS (2010) protocol, and include both appropriate action areas and zone of influences, as identified therein. These surveys should only be performed after the consultant has conferred with USFWS and California Department of Fish and Wildlife (CDFW) on the appropriate survey methodology and scope.

2. Has the pump facility already been approved in a record of decision by the U.S. Bureau of Land Management? If not, herein we register our opposition to the pump facility. We know from previous surveys performed by several of our Board members in the 1990's when the site was proposed as the Eagle Mountain Landfill that tortoises occur there and would be affected by development of the facility. We are also concerned with the proximity of the proposed facility to Joshua Tree National Park and the potential to undermine conservation of desert tortoises by the National Park Service within the Park if the facility is developed.

3. Has BLM already considered the potential for the pump facility to subsidize raven populations in the area, which could be a detrimental impact to tortoises occurring in the region? In any case, BLM's environmental document must consider mitigation measures to be implemented to avoid common raven nesting on the new transmission line, regardless of the alternative location chosen. There should be detailed descriptions of how the project proponent will ensure no raven nesting on any new transmission towers and associated facilities.

4. The news release indicates the BLM intends "to prepare a resource plan amendment with an associated environmental assessment" and that the "environmental assessment will tier to the 2014 Final Environmental Impact Statement prepared by the Federal Energy Regulatory Commission for the Eagle Crest Pump Storage Facility." Why isn't the BLM considering either an Environmental Impact Statement (EIS) or Supplemental EIS for the transmission line? Since the transmission line will ostensibly cross through critical habitat and, with the information provided, there is no guarantee it will follow existing corridors or roads, we consider either an independent EIS or Supplemental EIS to be more appropriate than an EA.

Finally, we ask that the Council be considered an Affected Interest for this and any other project that may affect the desert tortoise where the BLM serves as the federal lead agency.

Regards,



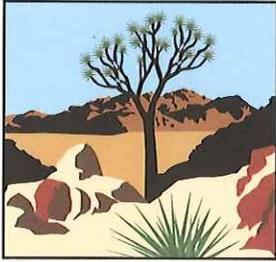
Edward L., LaRue, Jr., M.S.

Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

### **Literature Cited**

U.S. Fish and Wildlife Service. 1994. Endangered and threatened wildlife and plants; determination of critical habitat for the Mojave population of the desert tortoise. Federal Register 55(26):5820-5866. Washington, D.C.

U.S. Fish and Wildlife Service. 2010. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.



# Mojave Desert Land Trust

Preserving land to enjoy forever

P.O. Box 1544 • 60124 29 Palms Hwy • Joshua Tree, CA 92252  
Ph (760)366-5440 Fax (888) 869-4981 [www.mojavedesertlandtrust.org](http://www.mojavedesertlandtrust.org)

December 23, 2015

Director Neil Kornze  
Bureau of Land Management  
1849 C Street NW, Rm. 5665  
Washington, DC 20240

**RE: Eagle Crest Environmental Assessment**

Dear Director Kornze:

The Mojave Desert Land Trust's mission is to protect the Mojave Desert ecosystem, and its scenic and cultural resources. We implement this mission across the desert through land acquisition, outreach and education, and other strategic conservation initiatives. In the last ten years, we have collaborated with federal, state, and local agencies and partners to conserve over 55,000 acres of desert land. This includes over 15,000 acres of lands acquired as inholdings in Bureau of Land Management ("BLM") wilderness areas. We have an active membership of over 500, and are headquartered in Joshua Tree, California.

We urge the BLM to conduct a full Environmental Impact Statement (EIS) for the Eagle Crest Pumped Storage Project's 500 kilovolt gen tie line that more fully analyzes this key piece of infrastructure's direct and cumulative impacts. The project is occurring in an area and region that contains habitat of threatened and endangered species, is in a desert tortoise connectivity area identified by the United States Geological Survey, is adjacent to Joshua Tree National Park and National Conservation Lands proposed under the Desert Renewable Energy Conservation Plan, and significant migratory bird habitat in the microphyll woodlands that occur in the project's impact areas. The BLM's proposal to only complete an Environmental Assessment is inadequate to analyze the direct project impacts of covered activities on protected species and their habitats, or the cumulative impacts of this project in light of a number of other projects in the area, including the Eagle Crest Pumped Storage, Desert Sunlight, Devers to Palo Verde transmission line and associated substations, and future possible development in the Riverside East Solar Energy Zone. Given the anticipated impacts to these protected public resources, we see no possibility that an Environmental Assessment would lead to a Finding of No Significant Impact, and would require a full Environmental Impact Statement in any case.

We appreciate the opportunity to comment on this issue.

Respectfully,

Frazier Haney  
Conservation Director



December 21, 2015

Deputy District Director Greg Miller  
Bureau of Land Management  
22835 Calle San Juan de Los Lagos,  
Moreno Valley, CA 92553

Dear Deputy District Director Miller:

The National Parks Conservation Association (NPCA) respectfully submits the following scoping comments for the proposed Eagle Crest Pumped Storage Project Transmission Line Environmental Review.

NPCA is the voice of the national parks, dedicated to their protection and enhancement today and for future generations. We advocate on behalf of one million members and supporters, including nearly 120,000 Californians. NPCA works to safeguard the California desert's spectacular resources and recreational opportunities, including nearly six million acres of National Park lands. We operate three field offices in the Mojave Desert, including the Joshua Tree Field Office.

### **Introduction**

The proposed project area is located near Desert Center in the California desert on approximately 676 acres of Bureau of Land Management (BLM) land. The Eagle Crest Energy Company has applied for a right-of-way (ROW) grant to construct, operate, maintain and decommission a 500 kilovolt [kV] generation interconnect [gen-tie] line and a water pipeline. The gen-tie line would transmit electricity generated by Eagle Crest's pumped storage facility to the Southern California Edison's Red Bluff sub-station located on BLM lands in Riverside County, California. The water line would draw water from private land, traverse BLM land, and fill the reservoirs at the pumped storage facility.

The transmission line, gen-tie line and water pipeline currently being evaluated are essential components of the proposed Eagle Crest Pumped Storage Project, an energy project, which is located less than two miles from Joshua Tree National Park and is surrounded by the park on three sides. The National Park Service (NPS) has stated that, "Eagle Crest's Project threatens to

adversely impact Park resources, resulting in both immediate and long term negative consequences for the preservation and management of the Park.” In its July 21, 2014 Request for Rehearing and Stay sent to the Federal Energy Regulatory Commission (FERC), the NPS outlines the project’s violations of the National Environmental Policy Act (NEPA), which include failing to obtain adequate baseline data and surveys of resources in the project area; inaccurately characterizing the effects of the project on bighorn sheep, failing to address the effects of the project’s brine ponds on birds; inadequately addressing effects associated with the treating and disposing of acid mine drainage and failing to give equal consideration to the enhancement of fish and wildlife values, including habitat values.

NPCA respectfully submits the following comments.

### **BLM is Required to Conduct an EIS, Not an EA**

#### **Review the Level of Compliance Required for this Right of Way Project.**

NPCA strongly believes that a full and comprehensive Environmental Impact Statement (EIS) with adequate opportunity for stakeholder input should be conducted, and not just an Environmental Assessment (EA), due to the proposed action’s potential for significant and adverse direct, indirect and cumulative impacts on Joshua Tree National Park, , the National Conservation Lands designated by the DRECP adjacent to the proposed right of way, wildlife, air quality, groundwater resources and night sky values. We also question whether it is a responsible use of public funding to conduct this study without incorporating the information currently being investigated within the ongoing NPS Joshua Tree National Park Eagle Mountain Boundary Study. It is highly important to fully evaluate this component of the Eagle Crest Pumped Storage Project in relation to the entirety of that project due to the fact that the development has been highly controversial; the Department of the Interior (DOI) was not granted a rehearing on their concerns; the proposed action is an appropriate forum to revisit unresolved resource issues; and to obtain further input from stakeholders before BLM selects a course of action.

In its December 2, 2015 NOI announcement, BLM states that, “The environmental assessment will tier to the 2014 Final Environmental Impact Statement prepared by the Federal Energy Regulatory Commission (FERC) for the Eagle Crest Pump Storage Facility.” NPCA maintains that this procedure is inadequate because the 2014 FERC Eagle Crest Final EIS is fundamentally flawed due to its use of stale data and numerous deficiencies analyzing resources that have been pointed out by the NPS, as well as organizations and other stakeholders.

In fact, the BLM National Environmental Policy Act Handbook H-1-1790 states that, “Actions whose effects are expected to be significant and are not fully covered in an existing EIS must be analyzed in a new or supplemental EIS (7.2, p.69).” NPCA argues that the direct, indirect and cumulative impacts of the proposed action and the cumulative impacts from other projects in the vicinity, including the Eagle Crest Pumped Storage Project, have not been adequately described

in an existing EIS and could likely have a significant impact on a wide variety of natural and cultural resources, as well as completed and underway resource plans such as the NPS' Joshua Tree National Park Eagle Mountain Boundary Study or the proposed segregation and withdrawal of federal lands in the Eagle Mountain area. Specific significant, adverse indirect, direct and cumulative significant resource effects to be evaluated should include impacts to water, wildlife, wilderness, air quality, night skies, stakeholders and Joshua Tree National Park.

### **Potential Significant Adverse Impacts as Defined by the BLM Handbook Related to the Proposed Action**

As mentioned above, the BLM National Environmental Policy Act Handbook H-1-1790 states that, "Actions whose effects are expected to be significant and are not fully covered in an existing EIS must be analyzed in a new or supplemental EIS (7.2, p.69). The Council on Environmental Quality (CEQ) regulations explained in 40 CFR 1508.27 state that the term "Significantly" as used in NEPA requires considerations of both context and intensity (7.3, p.70). Context means that the action must be analyzed in several different contexts such as "Society as a whole (human, national), the affected region, the affected interests and the locality (7.3, p.70)." NPCA believes that a mere environmental assessment would fail to adequately analyze the proposed action and its cumulative impacts in terms of the affected region, affected interests, final DRECP land designations, the Joshua Tree National Park Eagle Mountain Boundary Study, wildlife, wilderness and Joshua Tree National Park.

The CEQ describes the term "Intensity" to mean, "The severity of the effect (7.3, p.71) and that in order to determine severity of the effect, you must look at direct, indirect and cumulative effects (40 CFR 1508.27 (b)(1))."

NPCA argues that the proposed action and its potential cumulative impacts pose a direct, indirect and cumulative, significant, severe and adverse effect to the following considerations that are highlighted in the BLM National Environmental Policy Handbook for evaluating the intensity of a proposed project. We believe that due to the fact that the proposed action has the potential for so many severe, significant direct, indirect and cumulative impacts, that the preparation of a full environmental impact statement with adequate time for stakeholder review is warranted.

### **Degrees to Which Effects are Likely to be Highly Controversial**

The proposed project and the entire Eagle Crest Pumped Storage Project are highly controversial. Thousands of stakeholders throughout the desert and the nation have written letters and e-mails to the Department of Interior and Federal Energy Regulatory Commission stating that they oppose the Eagle Crest Pumped Storage Project and want the Eagle Mountain area protected in perpetuity for the American people. Additionally businesses and numerous organizations have also gone on record opposing the Eagle Crest Pumped Storage Project. Finally, the National Park Service has identified grave resource concerns about the inadequacy of the 2014 Final EIS prepared by the FERC. In their July 21, 2014 Request for Rehearing and Stay, the NPS states

that, “The Eagle Crest’s Project threatens to adversely impact Park resources, resulting in both immediate and long-term negative consequences for the preservation and management of the Park.” Joshua Tree National Park has identified numerous resource concerns related to bighorn sheep, birds, water quality, desert tortoise (Especially as they relate to transmission lines), scenic viewsheds, Class I air-sheds, soundscapes and wilderness that should be evaluated in a full EIS.

### **Unique Characteristics of the Geographic Area**

The CEQ states that “Unique Characteristics” are “Generally limited to those that have been identified through the land use planning process or other legislative, regulatory or planning processes.”

In this case the proposed project and entire Eagle Crest Pumped Storage would have a significant, adverse direct, indirect and cumulative impact on lands with unique characteristics managed by Joshua Tree National Park, a national treasure, whose mission is to “Preserve resources unimpaired for future generations.” The proposed action would also have a significant adverse, direct, indirect and cumulative impact on Joshua Tree National Park’s federally designated wilderness, nearby BLM Wilderness areas, critical wildlife habitat, and current and freshly completed DOI resource plans including the DRECP, the National Park Service’s Eagle Mountain Boundary Study and the segregation of lands within the Eagle Mountain area. It is worth noting that BLM recently recognized the area’s significance by proposing additional conservation in the region for species habitat, and that the NPS is currently studying the entire 33,000 acre region for its eligibility to be returned to the National Park. These actions also indicate that the threshold of significance has been exceeded.

### **Consideration of Whether the Action may establish a Precedent for Future Actions with Significant Impacts.**

The proposed action and the Eagle Crest Pumped Storage Project would create a significant, adverse impact in that it would establish a harmful precedent for future actions. The BLM proposes to tier an EA for the current transmission line off of the Federal Energy Regulatory Commission’s 2014 Final EIS, but the NPS has identified numerous deficiencies with this document. Specifically, the National Park Service stated that the FERC Commission violated NEPA by relying on “Stale resource data” and “Failing to obtain adequate baseline data.” These concerns have not been adequately addressed. Allowing the action under consideration and the entire Eagle Crest Pumped Storage Project to move forward without the satisfactory resolution of this issue endangers the credibility of the Department of the Interior, which has gone on record with these concerns and sets the stage for future projects to rely on stale resource data and inadequate baseline data. It is the responsibility of the lead agency (in this case BLM) to ensure that the data being used to make decisions reflects the most current, scientifically accurate information. DOI has also raised concerns about the veracity of the FERC EIS through the

request for rehearing process. It is inconsistent for the Department to raise these concerns and subsequently use the very same document from which to tier an EA.

Furthermore, the 2014 FEIS acknowledges that, “Kaiser did not permit Eagle Crest to access the central project area to conduct (biological) surveys,” a situation that led to a flawed analysis of the area’s wildlife. A wide variety of wildlife utilize habitat in the project area including desert tortoise, bighorn sheep, kit fox, badgers, bats and golden eagles and this must be adequately analyzed in a full, comprehensive EIS.

### **Degrees to Which Effects are Highly Uncertain or Involve Unique and Unknown Risks**

The proposed project and the entire Eagle Crest Pumped Storage Project poses significant adverse risks to groundwater resources, wilderness, desert tortoise, night sky resources, and bighorn sheep. The effects of the proposed project are highly uncertain because they rely on inadequate and inaccurate data.

### **Consideration of whether the action is related to other actions with cumulatively significant actions**

The effects of the proposed action taken into consideration with the entire Eagle Crest Pumped Storage Project and other past, present and reasonably foreseeable actions are cumulatively significant and adverse in terms of their impacts to water, wildlife, Joshua Tree National Park, night sky resources, air quality and federally designated wilderness.

A cumulative impacts assessment should be fully analyzed in an EIS and should include, but not be limited to, the consideration of the following completed, current or foreseeable projects: Genesis Solar Energy Project, Palen Project, Eagle Crest Pumped Storage Project, Desert Harvest Solar Project, Desert Sunlight Solar Project, Sonoran West SEGS, Desert Center 50, Sol Orchard, Eagle Mountain Wind, John Deere Renewables Type II, Devers Palo Verde 2 Transmission Line, Desert Southwest Transmission Line and the SCE Red Bluff Station.

### **FERC EIS Deficiencies, History and Case Law**

The FERC FEIS has significant flaws, errors, shortfalls, mischaracterizations, and omissions that make it inappropriate for BLM to tier from. Many of these problems are rooted in the foundation of the FEIS, and can only be addressed by BLM conducting its own analysis from the start. Said differently, BLM must hit the “reset” button.

Starting over is certainly not a new proposal and the presentation of the significant problems in the FEIS is certainly not a new topic. In fact, it was DOI itself that suggested that the problems of the FEIS were so pervasive and ran so deep that only a supplemental FEIS would provide due process to resolve the issue.

As we know, DOI's requests were rejected, but DOI can still seek the relief it requested to FERC through BLM conducting a full, and new review of the full project.

BLM must review the full project and not merely the narrow scope of the transmission corridor. Practically and legally, this is the only way to address the significant problems DOI recognizes in the FERC FEIS.

BLM must conduct an EIS and not an EA. As we know, the ECPS project was determined to have significant environmental impacts and therefore an EIS was conducted by FERC. DOI agrees that this project poses "significant environmental impacts" and that FERC failed to conduct NEPA appropriately and sufficiently. For example, DOI notes the following in its rehearing request under the heading "**Lack of Adequate Baseline Data for the Central Project Area Renders the FEIS Invalid**":

"To ensure a "full and fair discussion of significant environmental impacts," an agency must use "high quality" information and include an "accurate" scientific analysis conducted with "professional integrity" 40 CFR 1500.1, 1502.24. By deferring its analysis, FERC failed to satisfy this requirement and undermined NEPA's important informational role."

The DOI's rehearing request is replete with factual evidence that concludes the FERC FEIS is inadequate and insufficient. The problems are pervasive, including lack of baseline data, lack of characterizing and discussing the significant environmental impacts, and misrepresentation and omission of data, research and science. It is simply not possible for these significant issues to be resolved through a protracted EA process that ignores that the already determined "significant environmental impacts" threshold has been met, triggering an EIS process.

Said differently, an EA is insufficient to seek the relief that DOI sought through its request of FERC to conduct *a SEIS* for the *same exact project*. The DOI correctly states in their rehearing request that "Eagle Crest's Project threatens to adversely impact Park resources, resulting in both immediate and long-term negative consequences for the preservation and management of the Park. A pristine example of a Southern California desert ecosystem, the Park provides important habitats for numerous native and threatened species, features extraordinary night sky and soundscape experiences, and offers unique recreational opportunities for the American public and visitors from around the world. However, the Commission's Order issuing an original license to the Eagle Crest Project fails to address the deficiencies in its FEIS analysis of impacts to park resources identified by the Department."

The problems that must be addressed by BLM, through an EIS process, include those that DOI raised in their July 21, 2014 Request for Rehearing letter, which we have attached. The DOI Request for Rehearing describes FERC FEIS errors that, through this letter, NPCA also states must be addressed in BLM NEPA review of the ECPS project. Instead of repeating each and every issue, we direct BLM to the attached letter. The issues the BLM review must address, and

the reasons that the BLM cannot tier from the FERC FEIS, are summarized as the following quotes from the DOI rehearing request:

- “The Commission violated the NEPA by failing to obtain adequate baseline data and surveys of resources in the project area in violation of 40 CFR 1500.1 and 1502.24”
  - o “Lack of Adequate Baseline Data for the Central Project Area Renders the FEIS Invalid”
  - o “The EIS Lacks Sufficient Data Regarding Wildlife”
  - o “The FEIS Lacks Sufficient Data Regarding Risks Associated with Acid Mine Drainage
- “The Commission violated NEPA by relying on stale data about resources in the central project area.”
- “The Commission violated NEPA by inaccurately characterizing the effects of the Project on bighorn sheep in violation of 40 CFR 1500.1(b) and 1502.24.”
- “The Commission violated NEPA by failing to address the effects of the Project’s brine ponds on birds.”
- “The Commission’s FEIS did not adequately address effects associated with treating and disposing of acid mine drainage that may result from the operation of the Project in violation of 40 CFR 1508.8(b).”
- “Because of the deficiencies identified above, FERC should address these deficiencies by undertaking a supplemental NEPA analysis to ensure that FERC takes a hard look at the direct, indirect and cumulative effects of the proposed action.”
- “The Commission violated Sections 4(e) and 10(a), which require the Commission to give equal consideration to the enhancement of fish and wildlife values, including habitat values, by failing to obtain and consider important data regarding wildlife and other environmental factors.”

In rejecting DOI’s rehearing request, FERC cites various FERC procedures and standards that should have no bearing on DOI’s independent review of this project using its own procedures, policies, and standards.

As evidenced above, the flawed FERC FEIS that BLM intends to tier from is no trivial issue and certainly not one that can be resolved through an EA process. The DOI has stated that, through the FERC EIS that it has found to be flawed,

“the Department will suffer irreparable injury without a stay because necessary data concerning resources over which the Department exercises jurisdiction has not been made available during the decision-making process. As a result, the true impacts of the Project cannot be ascertained without further analysis under NEPA. FERC should therefore issue a stay of its decision in order to prepare and circulate for public comment appropriate NEPA analysis that contains accurate and up-to-date information about the central project area and the effects of the Project on resources of concern to the Department and the public. Issuance of a stay in order to prepare a supplemental NEPA analysis is also in the public interest because it will provide the public with

an opportunity to review and comment on information that should have been collected and disclosed in the Draft EIS. Staying the decision in order to make sufficient site-specific data available furthers the public interest inherent in NEPA and the FPA.”

### **Specific resource Issues to be analyzed**

- NPCA urges the BLM to evaluate the following pertinent topics in a supplemental EIS for the ROW Assessment. The analysis should include specific indirect and direct impacts from the proposed action, as well as the cumulative impact on these resources by current, foreseeable and planned projects in the Desert Center area and along the southern boundary of Joshua Tree National Park.
- Bighorn sheep, especially related to maintaining habitat connectivity and the genetic diversity of the meta-populations that utilize the project area. Additionally, the lack of current, up to date on the ground, bighorn sheep surveys and studies are key reasons why on site surveys must be conducted in order to adequately analyze the project's impact on this iconic desert species. This topic must include new information related to bighorn sheep movements, National Park Service data and peer reviewed literature related to bighorn reactions to disturbances, use of water sources and wildlife corridors.
- The impact of the project on birds, including the impact of the two proposed brine ponds on avian species as outlined by the NPS letter to FERC regarding a Stay Request, as well as further analysis of the Eagle Crest Company's avian mitigation measures, which have not been adequately analyzed.
- On the ground biological surveys that are analyzed in a subsequent EIS to address the issue of inadequate and "stale data" in the 2014 FERC Final EIS for the wide variety of wildlife that utilize the project area including desert tortoise, bighorn sheep, kit fox, badgers, bats and golden eagles.
- Water quantity issues as they relate to the impacts of the proposed action and the related Eagle Crest Pumped Storage Project with regard to the recharge rate of the aquifer targeted for project pumping, its hydraulic connectivity to groundwater in Joshua Tree National Park, analysis of recharge rates including estimates from independent sources, the USGS and the NPS, and potential impact of project pumping to surface water resources in Joshua Tree National Park and other nearby protected BLM lands.
- Water quality issues related to acid mine drainage that address inadequacies in the 2014 FERC EIS, such as the lack of baseline data from the central Eagle Crest project area, the lack of information about the mineral composition of the former mining pits and the NPS critique of the Eagle Crest Company operating a reverse osmosis system to prevent or minimize the acidification of the project reservoirs. Finally, an analysis of water quality issues as they relate to the construction and disturbance of lands for the proposed action and their impact to drainages, surface water and groundwater is paramount.
- Desert Tortoise- The proposed action must analyze how an increasing number of predatory ravens that are often associated with transmission lines would impact this

used to inform the decision of whether to approve or deny the project.”

- Should not rely on the flawed and outdated BLM Eagle Mountain Landfill EIS and associated studies and reports.
- Should fully analyze the effects of any proposed mitigation measures on whether or not they would actually reduce potential adverse effects, such as the effects of brine ponds on birds. The BLM review should not defer the development and analysis of mitigation measures until after the license issuance, which (as DOI stated in their rehearing request) would be “inconsistent with NEPA.”
- Should address the risks associated with long-term treatment and disposal of more than 17,000 acre feet of potentially hazardous acid mine drainage upon decommissioning, rather than inappropriately defer to a future NEPA process, which is inconsistent with CEQ’s NEPA regulations on requiring agencies to consider the direct and indirect effects of a project.

Attached: DOI 7/21/14 letter to FERC requesting a Rehearing due to defective FEIS

Respectfully,



David Lamfrom  
Director-California Desert and Wildlife Programs  
National Parks Conservation Association  
400 South 2<sup>nd</sup> Avenue #213  
Barstow, CA 92311  
(760) 957.7887  
dlamfrom@npca.org

federally threatened species. Also, how the proposed action compromises existing resource plans to preserve this imperiled species.

- Air Quality- Analyze whether transmission lines associated with this project will have tangible impact ozone levels in nearby Joshua Tree National Park, which has been designated a Class I Air shed under the Clean Air Act? How will construction impact PM10 levels in the park and associated federally protected lands such as wilderness and ACECs?
- How will the proposed project and related Eagle Crest Pumped Storage Project impact scenic viewsheds from federally designated wilderness within Joshua Tree National Park and other protected BLM lands?
- How will construction of the transmission line currently being evaluated in the proposed action and the construction and operation of the associated Eagle Crest Pumped Storage Project impact natural soundscapes, wildlife and visitor experience at Joshua Tree National Park and nearby BLM lands?

### **The BLM review**

- Should ensure that access to the site occurs to gather adequate baseline data.
- Should not assume mitigation measures can be developed to address as-yet unknown conditions.
- Should not use mitigation measures as a proxy for baseline data.
- Should present data regarding the wildlife species that use the project area and Joshua Tree NP and impacts of the project on such wildlife. Field surveys should be used.
- Should not rely on the excessively outdated Eagle Mountain Landfill EIS and associated reports and studies.
- Should use up-to-date data concerning wildlife, such as bighorn sheep.
- Should not rely on the FERC EIS decision to rely on post-license mitigation measures as a proxy for adequate baseline data. DOI opposes this decision and states that this “fails to satisfy NEPA’s requirement that relevant data be considered during the NEPA process before a final decision is made.”
- Should ensure site access to gather information about the potential for acid mine drainage.
- Should test for and disclose acid generating potential.
- Should not rely on the FEIS’ unsupported statement that plans can be put in place “to address any adverse effects on groundwater.”
- Should heed to EPA’s statement in their FEIS comment letter for “development of more definitive information on the amount of acid rock drainage, [prior to project approval]...that the results be



# United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

July 21, 2014

By electronic filing

Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Subject: Eagle Mountain Pumped Storage Hydroelectric Project  
FERC No. 13123-002  
Department of the Interior Request for Rehearing and Stay

Dear Ms. Bose:

Enclosed for filing with the Federal Energy Regulatory Commission in the above-captioned proceeding, please find the Department of the Interior's Request for Rehearing and Stay of the Commission's June 19, 2014, Order Issuing Original License to Eagle Crest Energy Company for the Eagle Mountain Pumped Storage Project.

Thank you for your attention.

Sincerely,

Clementine Josephson  
Acting Regional Solicitor

Enclosure

cc: Service List, Project No. 13123

**BEFORE THE  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>In the Matter of the Application of</b>	)	
<b>Eagle Crest Energy Company for License</b>	)	
<b>for Major Unconstructed Project</b>	)	
	)	<b>Project No. 13123-002</b>
<b>Eagle Mountain Pumped Storage Project</b>	)	
	)	
	)	

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**Certificate of Service**

I hereby certify that the foregoing Request for Rehearing and Stay of the Department of the Interior in the above-captioned proceeding has this day been filed electronically with the Federal Energy Regulatory Commission and served, by electronic mail or by deposit in U.S. mail for postal delivery, upon each person designated on the Service List compiled by the Commission Secretary for this Project.

Dated at Sacramento, California, this 21st day of July, 2014.

  
\_\_\_\_\_  
Thomas D. Eckert  
Office of the Solicitor  
Department of the Interior  
2800 Cottage Way, E-1712  
Sacramento, CA 95825

BEFORE THE  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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**In the Matter of the Application of  
Eagle Crest Energy Company  
for License for Major Unconstructed  
Project, Eagle Mountain Pumped  
Storage Project.**

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**PROJECT NO. P-13123 /  
DOCKET NO. P-13123-002**

**THE UNITED STATES DEPARTMENT OF THE INTERIOR'S  
REQUEST FOR REHEARING AND STAY OF ORDER**

Pursuant to section 313(a) of the Federal Power Act (FPA)<sup>1</sup> and Rule 713 of the Federal Energy Regulatory Commission's (FERC or the Commission) Rules of Practice and Procedure,<sup>2</sup> the United States Department of the Interior (the Department), on behalf of the National Park Service (NPS), requests a rehearing and stay of the Commission's *Order Issuing Original License*, 147 F.E.R.C. ¶ 61,220 (June 19, 2014) (Order).<sup>3</sup> In the Order, the Commission approved the application of Eagle Crest Energy Company (Eagle Crest or Licensee) to construct, operate and maintain the Eagle Mountain Pumped Storage Project (Project) for 50 years in Riverside County, California. The Commission's Order states that, under current ownership, the Project would occupy approximately 699.2 acres of public land managed by the Bureau of Land

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<sup>1</sup> 16 U.S.C. § 825l(a).

<sup>2</sup> 18 C.F.R. § 385.713.

<sup>3</sup> The Department of the Interior intervened in this proceeding by Notice filed February 25, 2011. (Department's Notice of Intervention (FERC Accession Number 20110225-0017)). Its timely intervention entitles the Department to party status in this proceeding (See, Order at p. 3 n. 9), and it thus may request rehearing of the Order. 16 U.S.C. §825l(a).

Management (BLM), while noting that this acreage includes 448.6 acres that are currently involved in litigation over a public/private land transfer. Order at 4, see, n.12.<sup>4</sup>

The central project area for the Eagle Crest Project is located within one and one-half miles of Joshua Tree National Park (the Park) and is surrounded by the Park on three sides. The Park's eastern and southern sections, which are closest to the central project area, lie in the Colorado Desert, an arid region which experiences little annual rainfall and has no large natural lakes or water bodies. The Project, however, would result in the creation of two reservoirs with surface areas of 191 and 163 acres, as well as 11 brine ponds covering 56 acres. (Final Environmental Impact Statement for Hydropower License, Eagle Mountain Pumped Storage Project – FERC Project No. 13123-002, California (FEIS) (FERC Accession Number 20120130-4001) at 17, 88.) The central project area also includes a powerhouse, four turbines, spillways, various tunnels, switchyards, wells and pumps, administrative facilities, and six miles of roads. (FEIS 17-21.)

Eagle Crest's Project threatens to adversely impact Park resources, resulting in both immediate and long-term negative consequences for the preservation and management of the Park. A pristine example of a Southern California desert ecosystem, the Park provides important habitats for numerous native and threatened species, features extraordinary night sky and soundscape experiences, and offers unique recreational opportunities to the American public and visitors from around the world. However, the Commission's Order issuing an original license to the Eagle Crest Project fails to address the deficiencies in its FEIS analysis of impacts to Park resources identified by the Department. See, Department's Comments on the Draft Environmental Impact Statement, Eagle Mountain Pumped Storage Hydroelectric Project (Department's DEIS Comments), February 28, 2011 (FERC Accession Number 20110228-5238); Department's Comments on the Final EIS for the Eagle Mountain Pumped Storage Hydroelectric Project (Department FEIS Comments), February 29, 2012 (FERC Accession Number 20120229-5169). Instead, the Commission's Order relies, in part, upon the National

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<sup>4</sup> Some of the lands that would be occupied by the Project are subject to federal litigation challenging a land exchange between BLM and Kaiser in support of the now-abandoned Eagle Mountain Landfill project. *National Parks Conservation Assn. v. BLM*, 606 F.3d 1058 (9<sup>th</sup> Cir. 2010). The land exchange currently remains in place, but litigation before the U.S. District Court for the Central District of California is ongoing. If the court were to order the unwinding of the exchange, Kaiser would have to return approximately 385 acres of land needed for the Eagle Crest Project to the BLM, thereby increasing the amount of BLM-managed public land needed for the Project.

Environmental Policy Act (NEPA) analysis prepared for the Eagle Mountain Land Exchange that was remanded for supplementation in *National Parks Conservation Assn. v. BLM*, 606 F.3d 1058 (9<sup>th</sup> Cir. 2010). For the reasons stated below, the Commission should grant the Department's motion for rehearing, stay its Order, and undertake appropriate NEPA analysis to demonstrate that FERC has taken a hard look at the environmental effects of the Eagle Crest Project.

## I. STATEMENT OF ISSUES

Pursuant to Rule 713(c)(2),<sup>5</sup> the Department, on behalf of NPS, provides the following statement of issues and specifications of error:

- A. The Commission violated the NEPA by failing to obtain adequate baseline data and surveys of resources in the project area in violation of 40 C.F.R. §§ 1500.1 and 1502.24. *LaFlamme v. FERC*, 852 F.2d 389, 400 (9<sup>th</sup> Cir. 1988); *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1084 (9<sup>th</sup> Cir. 2011).
- B. The Commission violated NEPA by relying on stale data about resources in the central project area. *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1084 (9<sup>th</sup> Cir. 2011).
- C. The Commission violated NEPA by inaccurately characterizing the effects of the Project on bighorn sheep in violation of 40 C.F.R. § 1500.1(b) and 1502.24. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492-93 (9<sup>th</sup> Cir. 2011); *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1167 (9<sup>th</sup> Cir. 2003); *Seattle Audubon Society v. Espy*, 998 F.2d 699, 704 (9<sup>th</sup> Cir. 1993).
- D. The Commission violated NEPA by failing to address the effects of the Project's brine ponds on birds. *LaFlamme v. FERC*, 852 F.2d 389, 400 (9<sup>th</sup> Cir. 1988); *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1084 (9<sup>th</sup> Cir. 2011).
- E. The Commission's FEIS did not adequately address effects associated with treating and disposing of acid mine drainage that may result from the operation of the Project in violation of 40 C.F.R. § 1508.8(b). *San Luis Obispo Mothers for Peace v. NRC*,

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<sup>5</sup> 18 C.F.R. § 385.713(c)(2).

449 F.3d 1016 (9<sup>th</sup> Cir. 2006), *cert. denied sub nom. Pac. Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, 549 U.S. 1166, 127 S. Ct. 1124, 166 L. Ed. 2d 891 (2007); *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1128 (D.C. Cir. 1971).

- F. Because of the deficiencies identified above, FERC should address these deficiencies by undertaking a supplemental NEPA analysis to ensure that FERC takes a hard look at the direct, indirect and cumulative effects of the proposed action. *League of Wilderness Defenders v. Connaughton*, 752 F.3d 755 (9<sup>th</sup> Cir. 2014); *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9<sup>th</sup> Cir. 2006).
- G. The Commission violated Sections 4(e) and 10(a), which require the Commission to give equal consideration to the enhancement of fish and wildlife values, including habitat values, by failing to obtain and consider important data regarding wildlife and other environmental factors.
- H. The Commission should stay the license because equitable factors weigh in favor of a stay. *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at page 61,649 (2005).

## II. VIOLATIONS OF NEPA

### A. Lack of Adequate Baseline Data for the Central Project Area Renders the FEIS Invalid

#### 1. The EIS Lacks Sufficient Data Regarding Wildlife

The FEIS's impact analysis for wildlife is flawed because it is not based on adequate baseline data and surveys of the central project area and because it assumes that mitigation measures can be developed to address as-yet unknown conditions. The FEIS acknowledges that "Kaiser did not permit Eagle Crest to access the central project area to conduct [biological] surveys." (FEIS at 115.) Figure 12 in the FEIS clearly depicts that no field surveys were conducted anywhere within the central project area. Many of the wildlife species that use habitat in and around the central project area (e.g., desert tortoise, bighorn sheep, kit fox, badgers, bats, Golden eagles) also use adjacent habitat within Joshua Tree National Park.

In the absence of current field surveys, FERC's understanding of biological resource conditions in the central project area was primarily based on a limited set of aerial photographs and biological reports prepared in the 1990s for the Eagle Mountain Landfill EIS. (FEIS at 115.) Examples of aerial photographs submitted by Eagle Crest are included as Appendix C to Eagle Crest's July 7, 2010 Supplemental Information filed with FERC. (FERC Accession Number 20100707-5073). These photographs reveal few details about on-the-ground habitat conditions. The Eagle Mountain Landfill reports, which FERC used as a basis for the impact analysis in the FEIS, consist of four studies from the 1990s relating to bats, a 1996 report relating to bighorn sheep, and the 1992 Biological Opinion issued by the Fish and Wildlife Service for the Eagle Mountain Landfill project. (FEIS at 115.)<sup>6</sup>

The Department and the U.S. Environmental Protection Agency (EPA) raised concerns during the comment process regarding the lack of site access to conduct surveys that were "necessary to characterize the site." (FEIS at A-72; A-75; Department's DEIS Comments, February 28, 2011; Department's FEIS Comments, February 29, 2012; EPA Comments on Final Environmental Impact Statement for the Proposed Eagle Mountain Pumped Storage Hydroelectric Project (EPA FEIS Comments), March 8, 2012 (FERC Accession Number 20120308-5091).)

In responding to these comments, FERC acknowledged that site-specific surveys were "necessary" but did not require them prior to completing the NEPA process:

[W]e recognize that additional surveys and preparation of mitigation activities would be necessary prior to project construction. However, the project record contains sufficient information, including reports prepared for the landfill EIS, the landfill biological opinion, and our analysis of historical and recent aerial photography, to adequately describe the affected environment and potential project effects on terrestrial resources in the central project area. Additionally, if the Commission were to grant a project license, Eagle Crest would initiate a 2-year period of final design engineering. During this period, Eagle Crest would conduct thorough, on-the-ground surveys within portions of the project previously inaccessible. These surveys would include surveys for sensitive plant species, bats, desert tortoise, and desert tortoise predators. During this period, Eagle Crest would consult with resource agencies and prepare reports detailing the results of these surveys. Based on the results of these surveys and prior to any ground-disturbing activities, Eagle Crest would prepare and/or amend mitigation plans for kit

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<sup>6</sup> In its response to comments, FERC also indicated that it consulted a 2005 radio-telemetry study related to bighorn sheep. (FEIS at A-76.) However, as indicated in Section II(C), newer information concerning bighorn sheep use of the project area is now available and should have also been considered during the NEPA process.

fox, badger, bats, raptors, desert tortoise, and desert tortoise predators. Development of these plans would occur in consultation with resource agencies and require Commission approval before any ground disturbing activities could commence. (FEIS at A-72.)

To ensure a “full and fair discussion of significant environmental impacts,” an agency must use “high quality” information and include an “accurate” scientific analysis conducted with “professional integrity.” 40 C.F.R. §§ 1500.1, 1502.24. By deferring its analysis, FERC failed to satisfy this requirement and undermined NEPA’s important informational role. “NEPA clearly requires that consideration of the environmental impacts of proposed projects take place *before* any licensing decision is made.” *LaFlamme v. FERC*, 852 F.2d 389, 400 (9<sup>th</sup> Cir. 1988) (emphasis in original)(finding that reliance on post-licensing, two season recreation study violated NEPA); *see also Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1084 (9<sup>th</sup> Cir. 2011) (invalidating an EIS that relied on post-licensing surveys of the project area to mitigate the effects of the project). An agency’s reliance on post-approval mitigation measures “presupposes approval” and “assumes that – regardless of what effects construction may have on resources – there are mitigation measures that might counteract the effect without first understanding the extent of the problem.” *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d at 1084-85. The court in *LaFlamme* pointedly explained the failings of this approach: “reliance upon post-licensing study to fully develop a mitigation plan deprives FERC of any foundation upon which to base their conclusion that the project’s impact ... will not be significant.” *LaFlamme*, 852 F.2d at 400. Stated succinctly, mitigation measures cannot be used “as a proxy for baseline data.” *Northern Plains Resource Council*, 668 F.3d at 1085.

FERC’s FEIS, however, does just that. The Project license directs Eagle Crest to conduct a suite of post-license surveys and to then develop mitigation plans. The Project license orders baseline surveys for a variety of wildlife species in the central project area including Couch’s Spadefoot toad (Article 411) and badgers, kit fox and bats (Article 414). Despite the absence of data from these surveys or a full understanding of the types of mitigations that Eagle Crest will propose to protect these species, the FEIS concludes that construction impacts would be reduced to acceptable levels for wildlife (FEIS at 153) and that disturbance to bats will be minimized (FEIS at 167).

FERC's decision to rely on post-license mitigation measures as a proxy for adequate baseline data fails to satisfy NEPA's requirement that relevant data be considered during the NEPA process before a final decision is made. *Northern Plains Resource Council*, 668 F.3d at 1085, quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9<sup>th</sup> Cir. 2008); *LaFlamme*, 852 F.2d at 400.

## **2. The FEIS Lacks Sufficient Data Regarding Risks Associated with Acid Mine Drainage**

The lack of baseline data from the central project area, and in particular the mineral composition of the former mining pits, has also compromised the FEIS's ability to accurately disclose potential adverse effects associated with acid mine drainage.<sup>7</sup> Both DOI and NPS raised concerns about the lack of access to the site to gather information about the potential for acid mine drainage and requested that testing for acid generating potential occur before license issuance. (FEIS at A-65, A-71 and A-76.) EPA voiced the exact same concerns, and indicated that the concerns raised concerning the unknown extent of acid rock drainage that would result from filling the two reservoirs remain unresolved.<sup>8</sup> (EPA FEIS Comments, March 8, 2012.)

FERC acknowledged that "without samples to determine the amount of pyrite and other sulfides in the largely inactive mine pits, the extent of acid production is speculative;" that "reliable information [about acid production] is currently not available;" and that there is uncertainty as to whether "acid production is likely to result from filling the existing mining pits with water for the pumped storage project, which could affect water quality." (FEIS at 94 and 326.) Despite this knowledge vacuum, the FEIS concludes that plans can be put in place "to address any adverse effects on groundwater." (FEIS at 95.)

A careful review of the license terms indicates that the FEIS's assurance is unfounded. License Article 406 (Reverse Osmosis and Desalination Facilities) simply requires Eagle Crest to

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<sup>7</sup> Acid mine drainage and the resulting hazardous conditions it creates is explained in the FEIS at pages 91-92.

<sup>8</sup> In relevant part, EPA's letter states, "Interaction between project water and mine pit materials could result in substantial amounts of acid production, especially since project operations would result in a well-mixed, oxygenated, and fluctuating water column. We urge development of more definitive information on the amount of acid rock drainage, prior to the Commission's approval of the hydropower license. We continue to recommend that the pre-design investigation of the acid leached byproducts (e.g., metals and sulfate) and non-acid byproducts (e.g. arsenic) that could be produced as a result of the project be conducted prior to completion of the NEPA process, and that the results be used to inform the decision of whether to approve or deny the project."

“[describe] steps that would be taken in the event that reservoir water quality degrades to levels below that of the project’s water supply wells.” Article 406 also does not ensure against seepage of acidified water into groundwater near the central project area. It only requires Eagle Crest to identify the “steps to be taken” if water quality in the seepage recovery wells degrades below pre-project baselines. FERC cannot rely on the fact that it has ordered Eagle Crest to maintain and operate a reverse osmosis system as a bulwark against the production of acidified reservoir water because FERC’s FEIS acknowledges that Eagle Crest’s proposed reverse osmosis system is not designed for treating the pH of the water and would have to be retrofitted in some unspecified way. (FEIS at 94.)

Without understanding the extent of the problem, FERC approved the Project and ordered Eagle Crest to collect the necessary data later. FERC’s license also includes poorly defined mitigation parameters that do not provide the assurance as to future water quality standards indicated in the FEIS (i.e., that “any adverse effects” on groundwater would be addressed.) (FEIS at 95.) This approach does not satisfy NEPA’s requirement that adequate data be gathered and considered during the NEPA process so that the true impacts of the Project can be understood before a decision is made. *Northern Plains Resource Council*, 668 F.3d at 1085; *LaFlamme*, 852 F.2d at 400.

## **B. The FEIS Improperly Relied on Stale Data**

As discussed in Section II(A), the lack of access to the central project area forced Eagle Crest and FERC to rely on 1990-era field surveys from the Eagle Mountain landfill project for most species of wildlife. “Reliance on data that is too stale to carry the weight assigned to it may be arbitrary and capricious.” *Northern Plains Council*, 668 F.3d at 1086. In this case, there is persuasive evidence that conditions in the Project area have changed and that surveys conducted more than 20 years ago no longer adequately represent on-the-ground conditions. In its Biological Opinion, the Fish and Wildlife Service (FWS) indicated:

Documents associated with the landfill project are 15-20 years old, a long enough period of time that some recovery of vegetation may have naturally occurred. Further, these documents filtered their description of the landscape through the lens of the proposed landfill project, which had a different set of potential habitat

impacts and a somewhat different footprint than the proposed hydropower project. Consequently, these documents can inform the habitat baseline discussed below, but should not be treated as a definitive representation of what is currently on the project site. (FWS Biological Opinion, April 10, 2012 (FERC Accession Number 20120413-5116).)

Evidence that conditions in the central project area may have evolved derives from recent, peer-reviewed studies of bighorn sheep. These studies<sup>9</sup> clearly support the existence and importance of bighorn movements through the central project area, which maintain regional population connectivity, and present a sharp contrast to the analysis and conclusions reached by FERC in the FEIS. (See Section II(C).)

Although Eagle Crest supplemented the 1990-era landfill surveys with a limited set of aerial photography, those photographs reveal few details about conditions on the ground. (Eagle Crest Supplemental Information, July 7, 2010 at Appx. C.) Coarse aerial photography cannot take the place of field surveys, particularly when there is a dearth of reliable, site-specific data. *Northern Plains Council*, 668 F.3d at 1086 (invalidating EIS because agency could not explain how aerial photographs were able to identify the presence or absence of sensitive plant species). Because the FEIS impermissibly relies on stale data, additional NEPA analysis must be undertaken to incorporate current wildlife data from the central project area and ensure that FERC has taken the required “hard look.”

### **C. The FEIS’s Analysis of Project Effects on Bighorn Sheep is Flawed and Fails to Consider Recent Peer-Reviewed Studies**

Desert bighorn sheep are important components of the natural environment in Joshua Tree National Park. There are two groups of bighorn that inhabit the park and use the central project area; the Eagle Mountain population and the Coxcomb Mountain population. The Eagle Mountains are located near the eastern boundary of the park and directly south of the central project area. (FEIS Fig. 13. at 140.) The Coxcomb Mountains are northeast of the central project area. In its comments on FERC’s NEPA documents, the NPS raised numerous concerns about the effects of the Project on desert bighorn sheep. (Department’s DEIS Comments, February 28, 2011, Department’s FEIS Comments, February 29, 2012.)

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<sup>9</sup> See n. 11.

The FEIS acknowledges that bighorn use the project area but concludes that the two groups of bighorn in the project vicinity do not mix. (FEIS at 141.) FERC, however, admits that it is lacking “detailed information about the migratory pathways of bighorn sheep” moving between Eagle Tank and Buzzard Spring and the movement of sheep to breeding and lambing areas. (FEIS at 160.) Despite including a figure depicting bighorn migration routes (FEIS Fig. 13 at 142.) which show the sheep traveling through the central project area, the FEIS nevertheless concludes that “major construction activities” and “extensive use of heavy machinery, including earth movers, dump trucks, cement trucks, and tunnel boring equipment” over a four-year period would only result in “minor and temporary” impacts on bighorn sheep. (FEIS at 159-160 and A-78.) The FEIS apparently bases this conclusion on the fact that project-related construction activities would be “similar to historical mining activities.” (FEIS at 160.) The FEIS also concludes that Project operations over the 50 year license term are unlikely to create any new disturbance for sheep. (FEIS at 161.)

FERC’s conclusions are based on faulty assumptions. First, as FERC acknowledges, large scale mining activities ceased in 1983. (FEIS at 64.) The FEIS presents no evidence of any industrial-scale activity in the central project area since that time. As a result, the FEIS should have recognized that bighorn sheep using the central project area have been largely unaffected by human activity or industrial activities for many years. Instead, FERC assumed, contrary to the facts, that current bighorn sheep movement patterns are compatible with large scale industrial operations like those that would commence when Project construction begins. In the absence of evidence of industrial scale activities in the central project area during the last 30 years, FERC’s conclusion that the Project “would not create any new disturbance” to bighorn is unsupported and arbitrary.

Second, FERC’s FEIS failed to take into account existing and new peer-reviewed research regarding the migration patterns and habitat preferences of the Eagle and Coxcomb Mountains bighorn populations that use the central project area. NEPA requires agencies to use “high quality” data and “[a]ccurate” scientific analysis. 40 C.F. R. § 1500.1(b). Courts have interpreted this requirement to mean that agencies must consider accurate scientific studies as well as the viewpoints of other agency experts. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 492-93 (9th Cir. 2011); *Center for Biological Diversity v. U.S. Forest Service*, 349

F.3d 1157, 1167 (9<sup>th</sup> Cir. 2003). The failure to consider relevant reports by subject matter experts can render an EIS deficient. *Seattle Audubon Society v. Espy*, 998 F.2d 699, 704 (9<sup>th</sup> Cir. 1993) (EIS's analysis of effects on wildlife that failed to consider relevant expert reports was invalid because EIS was based on insufficient data and was marred by false assumptions). Courts have also invalidated EISs that fail to properly evaluate the importance of biological corridors and the adverse impacts that arise from interfering with wildlife movement along biological corridors. *Marble Mountain Audubon Society v. Rice*, 914 F.2d 179, 182 (9<sup>th</sup> Cir. 1990) (Forest Service's failure to discuss the importance of maintaining a biological corridor in the Klamath National Forest violated the NEPA); *Oregon Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9<sup>th</sup> Cir. 2007) (Forest Service violated the NEPA when it failed to disclose its methodology for assessing the potential impact of displacing the fisher and damaging habitat in the corridor linking the Klamath-Siskiyou region and the Southern Cascades).

FERC purports to base its conclusions in the FEIS on two studies relating to bighorn: Divine and Douglas 1996, and Epps, *et al.* 2005. (FEIS at 141 and A-76.) Not only did FERC misconstrue the results of these studies, FERC ignored several recent and important peer-reviewed studies<sup>10</sup> establishing, contrary to the assertion in the FEIS, that the two groups of bighorn do mix and that there is an important movement corridor that traverses the central project area. In fact, these populations are relatively unique because there is not only genetic evidence of successful and important dispersal and reproduction between these herds (Epps, *et al.* 2007,<sup>11</sup> Epps, *et al.* 2010, Creech, *et al.* 2014), but there is also additional radio-telemetry data that supports movement through the central project area (Divine and Douglas 1996, Divine

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<sup>10</sup> Peer Reviewed studies that were not considered by FERC include: Bleich, V.C., J.H. Davis, J.P. Marshal, S.G. Torres, and B.J. Gonzales. 2009. Mining activity and habitat use by mountain sheep (*Ovis canadensis*). *European Journal of Wildlife Research* 55:183-191; Creech, T. G., C. W. Epps, R. Monello, and J. D. Wehausen. In press. Using network theory to prioritize management in a desert bighorn sheep metapopulation. *Landscape Ecology* 29:605-619; Divine, D.D. (1998) Habitat patch dynamics of desert bighorn sheep *Ovis canadensis nelsoni* in the eastern Mojave Desert. Ph.D. Thesis, University of Nevada-Las Vegas; Epps, C. W., J. D. Wehausen, V. C. Bleich, S. G. Torres, and J. S. Brashares. 2007. Optimizing dispersal and corridor models using landscape genetics. *Journal of Applied Ecology*. 44:714-724; and Epps, C. W., J. D. Wehausen, P.J. Palsboll, and D.R. McCullough. 2010. Using genetic tools to track desert bighorn sheep colonizations. *Journal of Wildlife Management* 74:522-531.

<sup>11</sup> The Epps 2007 study is specific to the central project area. It predicts the actual corridor that bighorn are most likely to use between the Eagle and Coxcomb Mountains, which is through the area that would be developed by the Eagle Crest Project. Epps 2007 also confirms movements between the two bighorn populations. FERC failed to consider Epps 2007.

1998). Connectivity based on the least resistance models of Epps, *et al.* (2007) and telemetry data (Divine and Douglas 1996, Divine 1998) clearly support the conclusion that the primary route of movement between these areas is located where the Commission's Order authorizes the construction of reservoirs and roads to be located. In addition, research has shown the desert bighorn will avoid a wide range of roads in this region, from freeways to off-road vehicle trails (Bleich, *et al.* 2009). The cumulative weight of these studies is in direct conflict with the FEIS's assertion that the impacts of Project construction and operation on these bighorn populations will be mitigated.

It is also apparent that FERC did not correctly interpret the two studies it did cite in the FEIS. Past and recent work provides evidence of sheep movement in the central project area and between the Eagle and Coxcomb Mountains (Divine and Douglas, 1996, Divine, 1998, Epps, *et al.*, 2007, Epps, *et al.*, 2010). Yet, the FEIS states that the two sheep populations do not mix. (FEIS at 141.) While the Epps 2005 study is not specific to the project area, it uses genetics to show that interstate highways, canals, and human developments can eliminate gene flow between bighorn populations. When this occurs, it leads to genetic drift and inbreeding and increases likelihood of local extinctions, with no ability to recolonize a site due to such developments. Nevertheless, FERC concluded that industrial development associated with the Project would not create any new disturbances to bighorn. (FEIS at 161.) FERC's conclusions cannot be reconciled with the data on which FERC claims to rely and are otherwise unsubstantiated.

FERC not only failed to consider relevant scientific reports relating to bighorn movement in and through the central project area, it also misconstrued the information it did consider. The FEIS therefore falls far short of the requirement that an EIS be based on "accurate" scientific analysis of "high quality" data from scientific studies bearing on the resources that will be affected by the Project. 40 C.F.R. §§ 1500.1, 1502.24; *Western Watersheds Project*, 632 F.3d at 492-93; *Center for Biological Diversity*, 349 F.3d at 1167; *Seattle Audubon*, 998 F.2d at 704.

#### **D. The FEIS Failed to Account for Potential Impacts of Brine Ponds on Birds**

The FEIS states that “[g]iven the arid nature of the surrounding area, it is likely the presence of this water would attract local wildlife.” It further states, “[t]he presence of the upper and lower reservoirs would provide tempting sources of water for local wildlife.” (FEIS at 154-55.) In addition and of particular concern to birds, the Project would also involve the creation of 11 brine ponds covering 56 acres. (FEIS at 88.) The FEIS explains that the brine ponds could attract birds and that the predicted concentrations of salts and heavy metals in the brine ponds “could be harmful or fatal to birds and other wildlife.” (FEIS at 156.) However, as FERC candidly admitted in the FEIS, the mitigation measures proposed by Eagle Crest during the NEPA process did “not provide enough detail for us fully analyze the effects” of whether the proposed mitigation measures would actually reduce potential adverse effects of the brine ponds on birds. (FEIS at 156.) Here again, FERC’s decision to defer the development and analysis of mitigation measures until after license issuance is inconsistent with NEPA. *Northern Plains Resource Council*, 668 F.3d at 1085; *LaFlamme*, 852 F.2d at 400.

#### **E. The EIS Fails to Address the Effects Associated with Treating or Disposing of Acid Mine Drainage at the End of the License Term**

FERC declined to address the risks associated with long-term treatment and disposal of more than 17,000 acre feet of potentially hazardous acid mine drainage upon decommissioning. In response to an NPS comment on this issue, the Commission stated, “...when a Commission-licensed project is proposed to be decommissioned, a full NEPA process, including the preparation of an EA or an EIS, is normally required and could involve the remediation of acid mine drainage and other issues associated with decommissioning.” (FEIS at A-68.)

The Council on Environmental Quality’s NEPA regulations require agencies to consider the direct and indirect effects of a project. Indirect effects are those that occur later in time but are still reasonably foreseeable. 40 C.F.R. § 1508.8(b). While agencies can refuse to consider effects that are “remote and highly speculative,” *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9<sup>th</sup> Cir. 2006), *cert. denied sub nom. Pac. Gas & Elec. Co. v. San Luis Obispo Mothers for Peace*, 549 U.S. 1166, 127 S. Ct. 1124, 166 L. Ed. 2d 891 (2007)(ordering remand

for reconsideration of NEPA document where agency rejected consideration of terrorist act as factor to be considered in NEPA analysis for license to construct nuclear waste storage facility), the potential need to treat and dispose of 17,500 acre-feet of potentially hazardous acid-mine drainage is neither remote nor speculative.

FERC's FEIS acknowledges that the Project exhibits several of "the EPA-listed conditions that can lead to increased acid production," and that the highly oxygenated water column in the reservoirs coupled with the mineral composition and buffering capacity of the surrounding materials and the groundwater, "dictate the potential for acid rock drainage." (FEIS at 93.)<sup>12</sup> Because the FEIS envisions that acid mine drainage is a potential consequence of filling the abandoned mining pits with highly oxygenated water, it was arbitrary and capricious for FERC not to consider the effects of treating and disposing of contaminated water at the end of the license term.

The environmental impacts associated with the potential need to treat and dispose of acidified water from the Project reservoirs should have been considered in this NEPA process, before any "irreversible and irretrievable commitment of resources" was made, not in a future NEPA analysis upon decommissioning. *Calvert Cliffs' Coordinating Comm., Inc. v. U. S. Atomic Energy Comm'n*, 449 F.2d 1109, 1128 (D.C. Cir. 1971). To ensure that consideration of future environmental impacts does not "become a hollow exercise," an agency must consider those effects "at a stage where real environmental protection may come about," rather than at a stage "where corrective action may become so costly as to be impossible." *Id.* By failing to consider the future effects of acid-mine drainage now, before construction has begun, FERC has ensured that future consideration of these impacts will be a "hollow exercise," in violation of its duty to "give full *consideration* to environmental protection." *Id.* (emphasis in original).

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<sup>12</sup> Despite the acknowledgement that the mining pits exhibit conditions that could lead to acid mine drainage, the FEIS indicates that "water quality in the project reservoirs would not pose a risk to wildlife" and that they provide a "safe source of drinking water for bats and birds." (FEIS at 155.)

## F. Supplemental NEPA Analysis Should be Prepared and Circulated for Comment

The NEPA process mandates a coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that “the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371(1989).<sup>1314</sup> FERC must “‘apply a rule of reason,’ not supplementing ‘every time new information comes to light’ but continuing to maintain a ‘hard look’ at the impact of agency action when the ‘new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.’” *League of Wilderness Defenders v. Connaughton*, 752 F.3d 755 (9<sup>th</sup> Cir. 2014)(quoting *Marsh*, 490 U.S. at 373-4). The bar for when new information raises substantial questions about whether a project may cause significant degradation of some human environmental factor is purposefully set at “a low standard.” *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549, 562 (9<sup>th</sup> Cir. 2006).

New and existing information regarding bighorn sheep movements in and through the central project area exists but was not considered. (Section II(C).) Moreover, FERC misconstrued the information it did consider, leading it to conclude, incorrectly, that the Project would only result in “minor and temporary disturbances” to bighorn sheep. (FEIS at 160-162, Order at Paragraph 121.) Peer-reviewed studies presenting additional information about the importance of habitat connectivity in the central project area for bighorn (e.g., Epps, *et al.* 2007; Divine, 1998) and research showing that bighorn avoid roads (Bleich, *et al.* 2009) were not considered by FERC, even though this information was available. The information in these studies raises substantial questions as to the accuracy of the FEIS’s conclusions that construction of the Project will have only minor, temporary effects, and that 50 years of Project operations will not result in new impacts on bighorn.

A second reason supporting supplementation of the EIS arises from the fact that the FERC license directs Eagle Crest to conduct on-site surveys for many species of terrestrial

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<sup>13</sup> NEPA requires agencies to prepare a supplemental EIS when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” See, 40 C.F.R. §1502.9(c)(ii).

wildlife and to gather data about the acid-producing attributes of the mine pits, yet fails to require these surveys and data to withstand the rigors of a public review and comment under NEPA. The possibility that studies ordered as part of the license conditions could reveal new and important information about the effects of the Project on wildlife for which there are no surveys is real. The same holds true for information about the acid-producing attributes of the materials in the mining pits. It is inconsistent with NEPA's informational role for FERC to attempt to correct the deficiencies in the FEIS through a "non-NEPA procedure," such as ordering the collection of this data post-license. *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 567 (9<sup>th</sup> Cir. 2000)(invalidating an agency's attempt to consider new information during a non-NEPA procedure that occurred after the agency's initial decision on the project.)

For these reasons, the low bar triggering the need to prepare supplemental NEPA analysis has been easily exceeded here.

### **III. The Order is Contrary to FERC's Obligations to Equitably Balance Competing Interests Under the FPA**

The Commission is required to balance power and non-power values when issuing licenses under the FPA. Pursuant to Section 4(e) of the FPA, the Commission is required to give equal consideration to the enhancement of fish and wildlife values, including habitat values, and the preservation of other aspects of environmental quality. 16 U.S.C. § 797(e). Section 10(a) of the FPA further requires that licenses issued by the Commission be "best adapted to a comprehensive plan ... for the adequate protection, mitigation, and enhancement of fish and wildlife." 16 U.S.C. § 803(a)(1). As part of the decision making process, the Commission is directed to consider the recommendations of federal agencies having administrative responsibilities for recreation, cultural and other relevant resources. 16 U.S.C. § 803(a)(2)(B). The Department of the Interior and the National Park Service have administrative responsibilities over wildlife, cultural, and recreational values that will be affected by the Project.

As explained above in Section II, the Commission failed to obtain adequate baseline data regarding terrestrial wildlife and the acid-producing potential of the former mining pits. The Commission did so contrary to the recommendations of the Department, as set forth in the

Department's comments during the NEPA process. (Department's DEIS Comments, February 28, 2011; Department's FEIS Comments, February 29, 2012.)

Proper consideration can only be given to wildlife and environmental values if an accurate assessment of a project's impacts on the human environment is set forth in the project's NEPA document. FERC's FEIS was not based on adequate or timely data regarding the central project area. Without having had the ability to consider this data during its decision making process, it was impossible for the Commission to give any consideration, let alone equal consideration, to wildlife and other environmental values as required by Sections 4(e) and 10(a) of the FPA.

#### **IV. The Commission Should Stay The Issuance of the License**

Under Commission Rule 713(e), a request for rehearing does not ordinarily operate as a stay of the Commission's decision. 18 C.F.R. § 385.713(e). The Department requests that the Commission issue an order staying the license pending resolution of the rehearing request and any subsequent appeal, should one be filed. The Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a stay is in the public interest. *Pub. Util. Dist. No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at page 61,649 (2005).

The Department will suffer irreparable injury without a stay because necessary data concerning resources over which the Department exercises jurisdiction has not been made available during the decision-making process. As a result, the true impacts of the Project cannot be ascertained without further analysis under NEPA. FERC should therefore issue a stay of its decision in order to prepare and circulate for public comment appropriate NEPA analysis that contains accurate and up-to-date information about the central project area and the effects of the Project on resources of concern to the Department and the public. Issuance of a stay in order to prepare a supplemental NEPA analysis is also in the public interest because it will provide the public with an opportunity to review and comment on information that should have been collected and disclosed in the Draft EIS. Staying the decision in order to make sufficient site-specific data available furthers the public interest inherent in NEPA and the FPA.

The harm to Eagle Crest by any delay associated with the gathering of necessary data will not be serious because the Commission's order requires Eagle Crest to gather this data eventually (e.g., Articles 401, 404, 412, 414, 417, 420, 423). Eagle Crest will therefore not incur additional costs, nor will it be required to undertake substantially different work. The important difference, however, that tilts the balance in favor of the public and the Department is that this information should have been gathered and made available during the NEPA process. Staying the decision will accomplish this objective.

### **III. Conclusion**

The Commission should stay its decision in order to prepare and circulate for comment a supplemental NEPA analysis that addresses the deficiencies identified above.

Respectfully submitted,



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December 28, 2015

***VIA EMAIL***

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**Re: Scoping Comments on Behalf of the Desert Protection Society, Donna Charpied, and Larry Charpied on the Bureau of Land Management's Amendment to the Resource Management Plan for the California Desert Conservation Area and Associated Environmental Assessment for the Plan Amendment and the Eagle Crest Pumped Storage Project, California**

Mr. Miller:

The Desert Protection Society, Donna Charpied, and Larry Charpied (collectively, "Desert Protection Society") submit the following scoping comments on the Bureau of Land Management's ("BLM's") Amendment to the Resource Management Plan ("Plan Amendment") for the California Desert Conservation Area ("CDCA") and the associated Environmental Assessment ("EA") for the Plan Amendment and the Eagle Crest Pumped Storage Project ("the Project"), pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4332 et seq. ("NEPA"). The Project encompasses 676 acres of public land, for which the Eagle Crest Energy Company ("Eagle Crest") applied to BLM for a right-of-way ("ROW") grant to construct, operate, and decommission a 500 kV gen-tie line and a water pipeline to transmit electricity generated by Eagle Crest's pumped storage facility. The Desert Protection Society opposes this Project because it violates numerous laws, including NEPA, the Endangered Species Act, 16 U.S.C. section 1531 et seq. ("ESA"), and the Federal Land Policy Management Act, 43 U.S.C. section 1701 et seq. ("FLPMA"). Any future environmental review, including the proposed EA, must address these violations in detail, taking a "hard look" at the Project's impacts and weighing those detrimental effects against any minimal benefits.

BLM plans to prepare an EA tiered to the 2014 Final Environmental Impact Statement (“FEIS”) prepared by the Federal Energy Regulatory Commission (“FERC”) for the Eagle Crest Pump Storage Facility Project. However, that FEIS fails to comply with NEPA and therefore BLM should not rely on that document in conducting its environmental review. Because the Project’s impacts are likely to be significant, BLM must prepare an Environmental Impact Statement (“EIS”) that complies with NEPA, the ESA, FLPMA, and the CDCA.

### **BLM RELIES ON THE INADEQUATE 2014 FERC FEIS WHICH VIOLATES NEPA**

BLM’s reliance on the 2014 FERC FEIS is misplaced because that document fails to comply with NEPA and other relevant laws. By limiting its focus to the ROW for the gen-tie and water supply lines and the plan amendment only, BLM artificially limits the Project’s impacts and fails to take a hard look as required under NEPA. BLM must prepare a thorough EIS that comprehensively analyzes the Project’s potentially significant impacts. BLM must not shirk its duties under these laws simply because FERC failed to complete a proper NEPA analysis. FERC’s FEIS neglects to take a “hard look” at the Project’s impacts, does not consider a reasonable range of alternatives and fails to develop specific mitigation measures to avoid or reduce those impacts.

Under NEPA, the Commission must “consider every significant aspect of the environmental impact of a proposed action.” *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1166 (9th Cir. 2003); *National Parks & Conservation Association v. Bureau of Land Management (“NPCA v. BLM”)*, 606 F.3d 1058, 1072 (9th Cir. 2010); quoting 40 C.F.R. § 1502.1. Yet the FEIS fails to provide a “reasonably thorough” analysis or a “full and fair discussion of significant environmental impacts.” *NPCA v. BLM*, 606 F.3d at 1072 (quoting 40 C.F.R. § 1502.1); *State of California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). The Ninth Circuit has “warned that general statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998). The FEIS’ impact analysis is inadequate in six respects.

First, the FEIS fails to analyze the environmental impacts of decommissioning, which will be necessary at the end of the limited-duration 50-year license. NEPA requires an analysis of the impacts of the necessary decommissioning because it will have reasonably foreseeable environmental impacts. 40 C.F.R. § 1508.8(b) (agencies must analyze reasonably foreseeable impacts). Moreover, decommissioning will necessarily affect – either by exacerbating or ameliorating – the Project’s impacts. *Cf. Morris v. Nuclear Regulatory Commission*, 598 F.3d 677, 704 (10th Cir. 2010) (EIS’ analysis of groundwater impacts was adequate because it “[n]ot only . . . recognize[d]” the operational impacts on groundwater, it also “expressly explored ways in which the groundwater contamination could be . . . eventually remediated” during decommissioning).

Second, the FEIS fails to adequately analyze the impacts of the Project's groundwater use, and ignores this Project's conflicts with the CDCA Resource Management Plan ("RMP"), which requires protection of ground and surface water and dependent fish and wildlife. Instead of analyzing how to avoid the overdraft that the Project will cause when considered with the existing and foreseeable cumulative groundwater withdrawals in the Chuckwalla Groundwater Basin, the FEIS shifts the burden of solving the problem onto the public, concluding that well owners who believe that their wells are adversely affected by the project and its drafting of the aquifer must seek redress in the appropriate court. NEPA requires that agencies confront, disclose and fully analyze a project's adverse impacts, rather than candy-coat them in hopes that the public will look the other way. *Foundation for North American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1179 (9th Cir. 1982).

Third, the FEIS dismisses the Project's potential to cause acidic drainage. Acid leachate would occur because waters will leak from the reservoirs into sulfide-bearing rock formations such as those within Eagle Mountain. The FEIS' dismissal of this issue based on the assumption that "fine tailings," "roller-compacted concrete" and/or "clay materials" such as bentonite would adequately "reduce permeability" ignores the fact that none of these contemplated mitigation measures has been tested on site. FEIS, Appendix A at A-33. Moreover, the viability of containment of reservoir waters is dubious in view of the fact that the site is seismically active due to the presence of "[r]ange-front faulting" which has caused "[v]ertical displacements along this fault zone" of "up to several thousand feet." FEIS at 48.

Fourth, the FEIS fails to analyze how global warming will affect the Project's environmental impacts. NEPA requires agencies to conduct an examination of foreseeable Project impacts on existing and foreseeable environmental conditions, including climate change scenarios based on sound science. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1214 (9th Cir. 2008) (recognizing NEPA duty to "assess the environmental impacts, including the impact of climate change" of agency's national fuel economy standards); *Border Power Plan Working Group v. Department of Energy*, 260 F.Supp.2d 997, 1029 (environmental assessment must consider analysis of greenhouse gases from natural gas power plant turbines). Yet FERC's EIS failed to examine the Project's impacts in light of the foreseeable warming of climate and increasing aridity that will in turn result in reductions in surface water flows and groundwater levels. Contrary to NEPA's requirements, FERC failed to provide this assessment on the grounds that it would be too speculative to attempt to predict future scenarios that may occur due to climate change.

Fifth, the FEIS' cumulative impact analysis is inadequate. NEPA requires agencies to take a "hard look" at a project's cumulative impacts. *Oregon Natural Resources Council Fund v. Brong*, 492 F.3d 1120, 1133 (9th Cir. 2007). In *Brong*, the Ninth Circuit held that an EIS' cumulative impact analysis must "not only describe related projects but also enumerate the environmental effects of" cumulative projects, and "must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project."

In conducting this cumulative impact analysis, “some quantified or detailed information is required.” *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998). Contrary to NEPA’s mandate, FERC’s 2014 FEIS fails to provide “quantified or detailed” information about the cumulative effects of the Project in relation and together with the many other industrial-scale energy projects that have already been constructed or approved in the vicinity of the Project.

Sixth, the FEIS fails to analyze the environmental impacts of a reasonably foreseeable increase in fossil fuel use that will result from the Project. While FERC assumed that the Project would secure energy from renewable sources, the FEIS contains no requirement that FERC do so. And even if the Project does use renewable energy, its use of that energy would displace use of those renewable sources by other consumers, requiring them to rely on fossil fuels. Because FERC’s 2014 FEIS fails to take a hard look at the environmental impacts of this increase in fossil fuel use, it is inadequate.

Additionally, it is also improper for BLM to rely upon the 2014 FERC EIS because that EIS also fails to analyze a reasonable range of alternatives. NEPA requires that an FEIS “[r]igorously explore and objectively evaluate all reasonable alternatives” to provide environmentally preferable options “so that reviewers may evaluate their comparative merits.” 42 U.S.C. § 4332; 40 C.F.R. § 1502.14. An agency may not limit its consideration to only those alternatives it believes it may implement; alternatives should be wide ranging and include options that may require additional approvals or participation by others, such as utilization of locations closer to the energy demand centers than the Project site, or utilization of roof-top solar to generate energy within the urban energy demand centers. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 670 (7th Cir. 1997); *Alaska Wilderness Recreation and Tourism Assn. v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995). Yet the FEIS fails to consider any alternatives to the Project that involved different means of generating energy. Instead, alternatives were limited to Eagle Crest’s proposal, an alternative developed by the Commission’s staff involving the same site and the same basic project, and the nominal no-action alternative. FEIS at 17-41. The 2014 FERC FEIS is inadequate and cannot be relied upon by BLM because it failed to consider any action alternatives that would reduce or avoid the Project’s impacts.

Finally, the 2014 FERC EIS improperly defers the formulation of mitigation measures to reduce the Project’s impacts. It even defers until later the commission of plant and animals surveys necessary to analyze the impacts of the Project. But NEPA requires an EIS to discuss the “[m]eans to mitigate adverse environmental impacts” (40 C.F.R. § 1502.16(h)) “with ‘sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *South Fork Band Council v. U.S. Department of Interior*, 588 F.3d 718, 727 (9th Cir. 2009), quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989). The FEIS improperly defers commissioning plant and animal surveys, and formulating mitigation measures addressing construction impacts on biological resources, subsidence, invasive weeds, the proposed translocation of desert tortoises, and protection of groundwater quality, and is therefore

inadequate.

For these reasons, the 2014 FERC EIS is inadequate and BLM's planned reliance on it is improper.

**BLM MUST PREPARE AN ENVIRONMENTAL IMPACT STATEMENT THAT FULLY ADDRESSES ALL OF THE PROJECT'S IMPACTS**

In conducting its review of the proposed Plan Amendment, BLM must ensure compliance with all applicable environmental laws. Specifically, it must prepare an EIS that fully analyzes the environmental impacts of the Project under NEPA, and ensures compliance with ESA, FLPMA, and the CDCA.

To take the "hard look" at the Project as NEPA demands, BLM must address the environmental impacts discussed above. BLM must analyze the environmental impacts of decommissioning, detail all proposed mitigation measures and conduct all necessary plant and animal surveys, analyze a reasonable range of alternatives, examine impacts on groundwater levels, fully analyze the potential that the Project will cause acidic drainage, explain how global climate change will affect the Project's impacts, provide quantified or detailed information about cumulative impacts, and assess the impacts from a reasonably foreseeable increase in fossil fuel use.

BLM must also ensure compliance with the Endangered Species Act by fully analyzing and mitigating the Project's effects on desert tortoises. FERC previously relied upon post-approval surveys, a tortoise relocation plan, and exclusion fencing to avoid harm to this species. But post-approval surveys are no substitute for an adequate analysis of the Project's impacts *before* approval. BLM must undertake these necessary studies and provide this analysis in its EIS. Tortoise relocation, which can cause extreme stress and other adverse health effects, has not been shown to be a viable means of mitigating biological impacts. And exclusion fencing is inappropriate because tortoises migrate in straight lines and will thus strand themselves on this fencing, where they are likely to remain until dead. BLM must prepare an EIS that addresses these concerns and ensures compliance with the ESA.

BLM must also consider the Project's compliance with FLPMA. *NPCA v. BLM*, 606 F.3d at 1069 ("BLM must determine that 'the public interest will be well served' by a land exchange before approving such an exchange"), *citing* 43 U.S.C. ¶ 1716(a). In 2009 the Ninth Circuit Court of Appeals affirmed the District Court's order directing BLM to "set aside" its previous unlawful conveyance of this Project site because it violated both FLPMA and NEPA. *NPCA v. BLM*, 606 F.3d at 1065-1075. BLM's consideration of the requested right of way for this Project must comply with FLPMA's mandate that BLM manage lands so as to protect both the environment and other competing uses, and comply with the RMP.

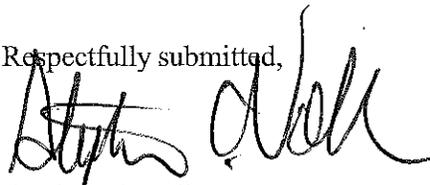
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California Desert District  
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Finally, BLM must ensure that the Project complies with the CDCA in order to protect the desert environment. Merely amending the CDCA Resource Management Plan in the manner proposed does not guarantee that the Project will not violate other land use standards of the CDCA RMP. BLM's future environmental review – whether in the form of an EA or the necessary EIS – must discuss the Project's consistency with all sections of the CDCA RMP and consider alternatives and mitigations for any incompatible uses.

### CONCLUSION

BLM must prepare a thorough EIS that fully addresses the Project's environmental impacts discussed above, and that avoids violations of the ESA, FLPMA, the CDCA and other applicable laws.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephan C. Volker', written over the typed name below.

Stephan C. Volker  
Attorney for the Desert Protection Society, Donna  
Charpied, and Larry Charpied



# Desert Protection Society

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“Don’t Waste Our Desert”

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#### Eagle Mountain Study Team

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August 4, 2015

*RE: Public Scoping Comments  
Eagle Mountain Boundary Study*

Dear Joshua Tree National Park Managers,

These scoping comments are submitted on behalf of individuals Donna and Larry Charpied and the Desert Protection Society.

Donna and Larry Charpied moved to Eagle Mountain, where they research and develop the jojoba plant, native to the area. Jojoba's significance and importance was sanctioned by the United States Congress in 1983, when jojoba was included in the Nation's Critical Agricultural Materials List, recognizing jojoba as a native crop of strategic and industrial importance, but for which our Nation is now dependent upon foreign sources. Their farm is located two miles as the Golden Eagle flies, on the outskirts of the Eagle Mountain town. The Charpied's chose Eagle Mountain to purchase land and research jojoba because the plant is native only to the deserts in California, Arizona, and Mexico. Joshua Tree National Park (“JOTR”) contains beautiful native stands of jojoba that greatly improved the value of their research because the plants are not molested by human beings. In 1987 the community of Desert Center/Eagle Mountain was informed that there were plans to build

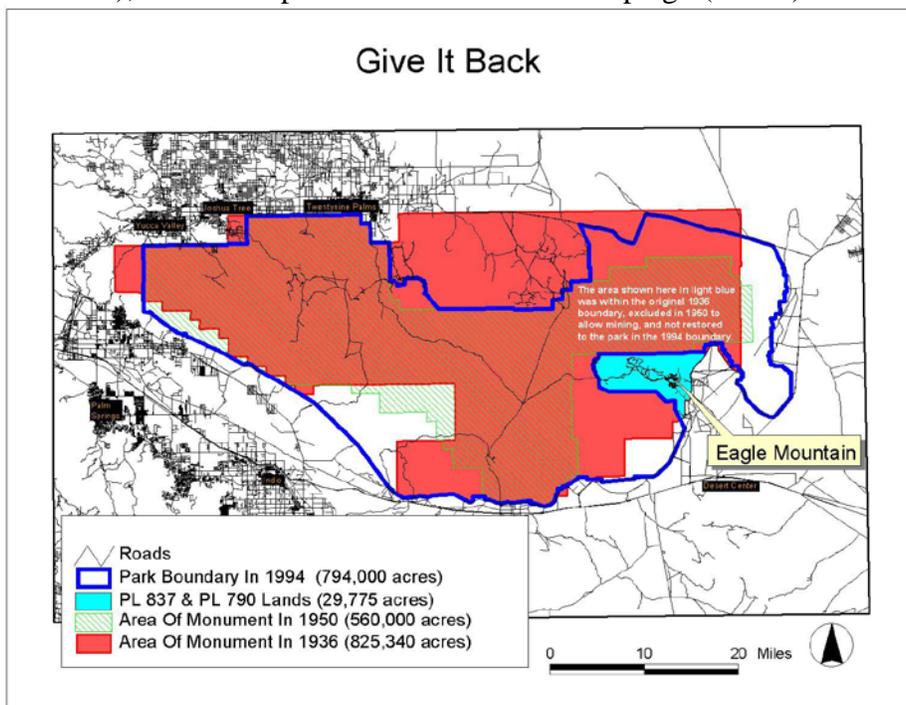
the world’s largest garbage dump at the defunct Kaiser Steel iron ore mine in Eagle Mountain. In 1990, the Charpieds co-founded the Citizens For The Chuckwalla Valley, a local grassroots organization formed to oppose the Eagle Mountain Dump (“Dump”), and research alternatives to dumps. In 1992, the Charpied’s successfully prosecuted the Environmental Impact Report (“EIR”) for the massive Eagle Mountain dump, in pro per, and in 1994 the Court ordered Riverside County, MRC/Kaiser, and BFI to conduct a new environmental document. In 1997, they again successfully prosecuted the case, but lost on appeal. In 1999, the Charpieds, Center For Community Action & Environmental Justice, and the Desert Protection Society filed a federal lawsuit to reverse the land exchange necessary for the development of the dump, nestled in the arms of Joshua Tree National Park. Finally December 18,

2014 the Plaintiffs received the final ruling and the dump was dumped! The Charpieds have a long and loving history with JOTR and thrilled that this boundary study is being conducted.

There is a piece of this conservation puzzle that is missing, but we will get to that below.

The Desert Protection Society (“DPS”) is a 501(c) (3) organization (reorganized from Citizens for the Chuckwalla Valley [“CCV”]), made up of residents of Eagle Mountain/Desert Center, Native Americans, local environmental activists from San Bernardino, Imperial, San Diego, Riverside Counties, and Nevada. DPS was formed in 1990 to prevent the World’s largest garbage dump from being built across the street from the Eagle Mountain elementary school, and on the doorstep of Joshua Tree National Park. We have since expanded our mission to include other potentially damaging proposals and actively participate in the decision making process for proposals that include, but are not limited to water storage projects, power generating projects, questionable land use issues, and other projects that have the potential to harm desert communities and the environment in and around Joshua Tree National Park. Members of DPS have in the past and continue to enjoy and learn about the resources in JOTR wilderness, particularly those lands included and not included in the study.

We strongly encourage Option: Restore 1936 Boundary to Provide Diverse Visitor and Resource Protection Opportunities (~28,000 acres). This concept is not new to the undersigned commenters. In fact around 1999-2000 members of DPS learned that the lands slated for the Dump and a God forsaken hydroelectric project had all been proposed on land once belonging to JOTR (National Monument at that time), and developed the Give It Back! Campaign (“GIB!).



GIB is a Campaign to Return 29,775 Acres of Land in the Eagle Mountain Range to Joshua Tree National Park and Designate the Defunct Kaiser Mine and Townsite a National Historic Landmark. Joshua Tree National Park ("JOTR") has been described as a living fabric, as pristine as any site in the California desert today or ever will be in the future. Joshua Tree's history elucidates the level of significance placed on the Park by the American people. The lands omitted from Joshua Tree National Monument in 1950 were to

be used to mine the minerals first and foremost and if not, the Highest and Best Use is to return the land to the Public, i.e. Joshua Tree National Park, since that is where it originated. There are no intentions to mine these lands in the future, and Kaiser relinquished all of its claims in the hopes of building the world’s largest dump. The old Kaiser Mine and campsite/townsite will be designated a National Historic Landmark, managed by National Park Service (“NPS”) for its superlative interpretive value, and its unique role in American culture in the creation of the steel industry on the West Coast. Former Secretary of the Interior Gayle Norton proposed a Superfund Garbage Dump in

Fresno for National Historic Landmark designation in 2002. Here in the desert, we have a National Historic Landmark that the Department of the Interior wanted to turn into a superfund site!

For years we have heard from agencies and politicians that we could not have those lands restored until the Dump litigation was complete. 15 years after our attempt the Courts ruled in our favor. Now it appears we are being told the lands cannot be restored because of the proposed hydroelectric project. When that is over, it will be another lame excuse. It is time to stop industry and take what is rightfully yours. You have the full support of the public.

### **JOSHUA TREE NATIONAL PARK HISTORY**

August 10, 1936 President Roosevelt established Joshua Tree National Monument by Presidential Proclamation to protect and preserve the area's historic, prehistoric, and scientific features.

September 25, 1950, Congress deleted 265,340 acres from Joshua Tree National Park by enacting Public Law 837 ("PL 837"). The President ordered a survey of minerals to "determine to what extent said area is more valuable for minerals than for National Monument purposes".

July 8, 1952 Congress enacted Private Law 790 ("PL790") granting certain rights-of-way and issuing patent to 460 acres of land to Kaiser Steel Corporation for campsite/millsite purposes. PL 790 included the expressed condition that "said property shall revert in fee to the United States in the event that said property is not used for a continuous period of seven years as a camp site or mill site or for other incidental purposes in connection with mining operations of said corporation or its successors in interest". It was fully intended by Congress and the President that this land would go back to public ownership if not used for the purposes of which the Acts were created, "the development of the Steel industry on the West Coast" (Source: House Report No. 398 that accompany PL 790). That purpose no longer exists.

In 1976, Joshua Tree was given federal wilderness designation and in 1977 Joshua Tree received Class I Wilderness Airshed status.

In 1984 the United Nations designated Joshua Tree as an International Biosphere Reserve as one of the last examples of a pristine desert ecosystem. According to the Park's former Superintendent Ernest Quintana, the chief reason for the Park's designation as an International Biosphere Reserve is that it "offers the most refuge for the greatest number of species from human impacts of any area in southern California."

On October 31, 1994 Congress added 234,000 acres to the monument, designated an additional 163,000 acres as wilderness, reaffirmed that Joshua Tree is "a public wildland resource of extraordinary and inestimable value for this and future generations" and, affirmed Joshua Tree's status as a national significant area by designating it a National Park.

The Southeastern Wilderness areas of Joshua Tree National Park were threatened by the proposed development of the World's largest garbage dump. Plans for the Eagle Mountain townsite included, but is not limited to smelters, fabrication plants, asphalt batch making plant, recyclable sales and a recycling center. All of these facilities are inappropriate when surrounded like an amphitheater by Joshua Tree National Park Wilderness. 29,775 acres of land omitted from the Monument in 1950 including the land slated for the dump, must be returned to the Park or the results will be an irretrievable commitment to natural resources, and death to one of our nation's premier National Parks. This area is also threatened by massive solar projects visa vie the Eastern Riverside County Solar

Energy Zone slated for the Chuckwalla Valley, and a recently licensed hydroelectric pump storage facility.

**Kaiser “selling” its land to Eagle Crest Energy:**

It appears that National Park Service (“NPS”) and/or the Department of the Interior (“DOI”) are not including lands slated for this miserable water-guzzling project, with the knowledge of the harm this project will visit upon our treasured Park.

***Eagle Crest Energy (“Eagle Crest”) could not possibly own the lands that Kaiser has sold them.*** This is for two reasons:

1. PL 790 provides in part that, “Lands shall revert...in the event that said property is not used for a continuous period of seven years as a camp site or mill site or for other incidental purposes in connection with the mining operations of said corporation or its successors in interest.” PL 790 directs the “Secretary of Interior...to grant to Kaiser Steel Corporation...permanent rights-of-way”, and to “attach and impose such further conditions on said rights-of-way, and”, to “promulgate such rules and regulations as he shall deem appropriate, consistent with the use of said rights-of-way for the purposes described in this Act.” The Secretary of Interior is “further authorized to grant a patent in fee to Kaiser Steel Corporation...”

The authority given to the Secretary of Interior by PL 790 is specifically described and limited in the grant from Congress. The Law does not leave any discretionary authority in the Secretary of Interior to exercise a “power of termination” of the patents or R-O-W on the subject lands. Unlike the Susanville Land Patent created by the Act of Congress of August 22, 1914, Congress under PL 790 provided that the lands subject to the Law “shall revert in fee to the United States in the event that said property is not used for a continuous period of seven years...” Congress did not give the Secretary authority to exercise his discretion as to whether or not the fee lands subject of the patent revert back to the United States. The language of Congress in PL 790 is clear and direct and leaves no room for departmental or Secretarial interpretation of the language that would prevent reverter of the fee lands. This estate ended automatically upon Kaiser’s failure to use the lands as directed by Congress. The reversionary interest left in the United States is a “possibility of reverter”. As prescribed in Black Law dictionary, 5th Ed. 1979, a possibility of reverter is the “interest which remains in a grantor or testator after the conveyance or devise of a fee simple determinable and which permits the grantor to be revested automatically of his estate on breach of the condition.”

a. Kaiser gave up its rights to mine in 1992 when they relinquished all mining claims and vested mining rights to build the world’s largest garbage dump. While this was argued in the Interior Board of Land appeals unsuccessfully, this point was never argued in the Federal lawsuit against the dump, so it is still ripe for litigation by citizens and/or NPS.

b. PL 790 included the expressed condition that “said property shall revert in fee to the United States in the event that said property is not used for a continuous period of seven years as a camp site or mill site or for other incidental purposes in connection with mining operations of said corporation or **its successors in interest**” (emphasis added). Successors in interest mean that the mine could change in form but not substance. Therefore the abandoned mine could be sold to another mining entity (change in form/name), but not say for example an amusement park or hydroelectric project (purpose). We contend that the sale of lands by Kaiser to ECE is an unlawful sale.

Why hasn't JOTR/NPS/DOI pursued this reversion to restore lands its properly owns according to Congressional Acts from 65 years ago? There was once an agreement between JOTR and the dump polluters. The agreement stated that after 117 year lifespan of the dump, the lands will be restored to JOTR. Obviously JOTR nor the Public would want that land as by that time it would be a Superfund site.

Now it appears as though the Public and managers at JoTr will have to wait until Eagle Crest has finished desecrating the land, it will be restored to JoTr, maybe. We as the Public have problems with that. One obvious problem is nobody knows what hair-brained schemes some developer will come up with after Eagle Crest is through. And clearly, if the Government and developers aren't recognizing Congressional Acts to restore the lands, how can we believe a Memorandum of Understanding or any kind of side agreement crafted by Eagle Crest/DOI would be honored 50 years from now? Eagle Crest are a business entity, trying to make a profit for itself and its investors. Nothing would prevent them from selling to some yahoo coming down I-10 with a dream of making billions of dollars, like so many others with pipedreams. JOTR/NPS MUST stand up for its rights!

3. Public Law 837 ("PL 837"), a Congressional Act of 1950 omitted 265,340 acres from Joshua Tree National Monument for mineral extraction. Prior to omitting the land, the President of the United States ordered the land surveyed to "determine to what extent said area is more valuable for minerals than for National Monument purposes...". An explicit provision in PL 837 states if the land is not used for mineral purposes it should be returned to Joshua Tree. With the exception of hobby miners, the area is not used for commercial mining any longer. The lands omitted in 1950 must be all inclusive in the Boundary Study since that is what Congress dictates.

DPS and the NPS are the only entities that intervened in the Federal Energy Regulatory Commission ("FERC"), which means we are the entities permitted to litigate the decision. Both entities filed a Motion for reconsideration (NPS also filed a Stay of the Decision) about a year ago. The FERC can do two things.: 1). they can grant our motions, which would require much more further review, or 2). Deny our Motions. If they do this, then we may litigate the case to the 9<sup>th</sup> Circuit Court of Appeals.

a. If our motions are granted, the license would be no longer valid, and no reason is left to omit the lands not being considered in the Boundary Study. Eagle Crest to this point have no vested interest involved.

b. If our motions are denied, will NPS litigate? NPS has challenged FERC in the past on bad decisions. If NPS will not litigate, please include analysis in your studies as to why you will not litigate.

In an attempt at fairness, lets discuss Kaiser. They have had a difficult time at best with the mine. First bankruptcy that put an ended to an era of mining for the Henry J. Kaiser iron ore mine. Then they unsuccessfully tried for nearly 25 years to acquire lands and a permit to build the world's largest garbage dump. The illegal sale of the property to Eagle Crest will be challenged. But is it fair to not make Kaiser whole again? We heard unsubstantiated rumors that Kaiser sold said lands to Eagle Crest for \$20,000,000 (twenty million) dollars. Conservationists will gladly raise that money to buy the subject lands from Kaiser and provide them to JOTR. The environmental studies need to analyze that possibility.

Even if Kaiser says it maintains its “right” to haul rock and gravel the fact remains that is not true. Henry J. Kaiser was given permission to mine iron ore at Eagle Mountain, which was part of Joshua Tree National Park to provide iron needed during World War II. In 1980, a reclamation plan was approved by Riverside County pursuant to California’s Surface Mining and Reclamation Act (SMARA), which had been adopted four years earlier. The current mine operator, Kaiser Ventures, has been allowed by Riverside County to ignore State law, and Federal law by BLM to avoid reclamation, and to conduct illegal operations on lands once part of Joshua Tree National Park.

The right to open an iron mine on lands within Joshua Tree National Park was conveyed by an act of Congress with the understanding that the property would revert to government ownership upon cessation of mining iron ore. Mining of iron ceased in 1983 when the Kaiser Steel filed for bankruptcy. Kaiser Steel’s successor, Kaiser Ventures, has not only failed to complete reclamation of the iron mine but now claims a vested right to mine. The operator has no vested right to mine; only the ability to mine iron ore as conveyed by Congress.

The reclamation plan approved for the iron mine covers 5500 acres. Reclamation pursuant to that approved reclamation plan should have been completed shortly after mining of iron ore ceased in 1983.

The current mine operator is illegally mining and selling aggregate from a few acres of the waste dumps created by the iron mining operation. The reclamation plan was approved for mining iron ore, and reclamation should have been completed 30 years ago pursuant to State law. Kaiser Ventures is allowed to make a mockery of California's Surface Mining and Reclamation Act (SMARA) by circumventing reclamation while claiming a right to continue mining aggregate under the old iron ore reclamation plan.

The Office of Mine Reclamation (OMR) issued a 15-Day Notice to Riverside County to enforce SMARA (Surface Mining And Reclamation Act). The County has failed to enforce SMARA and so has OMR (Office of Mine Reclamation). Kaiser Ventures is being allowed to circumvent reclamation and illegally claim a vested right to mine aggregate pursuant an approved reclamation plan to mine iron ore. The mine operator has successfully avoided reclamation for 30 years. It is time for the State to enforce SMARA.

We charge the State of California, Riverside County, Department of the Interior, BLM and, Kaiser with conspiracy to defraud the bankruptcy court.

The Southeastern Wilderness areas of Joshua Tree National Park are threatened by a number of projects. All of these facilities are inappropriate when surrounded like an amphitheater by Joshua Tree National Park Wilderness. 29,775 acres of land omitted from the Monument in 1950 including the land slated for the hydroelectric project, and the abandoned mine must be returned to the Park or the results will be an irretrievable commitment to natural resources, and death to one of our nation’s premier National Parks. To this end, The Desert Protection Society (formerly The Citizens for the Chuckwalla Valley), have developed the Give It Back! Campaign to restore the 29,775 acres of land back to JoTr.

As you are well aware, massive solar projects are being built and proposed by energy companies in the Chuckwalla Valley – nearly 150,000 acres if all the land in the Supplemental Solar PEIS are developed. In 2015, we have to balance the scales of industrialization and conservation (a little Environmental Justice is warranted here!), and this could be achieved through transferring the 29,775 acres of lands in the Eagle Mountains to Joshua Tree National Park.

The Eagle Mountain Mine has served the purpose intended by Congress when it conveyed to Kaiser Steel authorization to mine iron ore in Joshua Tree National Park. Having fulfilled its purpose, it is time to make Joshua Tree National Park whole again.

### **Survey Team Examine Give It Back! Lands**

The Center for Community Action and Environmental Justice along with the Citizens for the Chuckwalla Valley (DPS) researched two laws enacted in the 1950's, when President Truman removed lands from Joshua Tree National Monument for the purpose of mineral exploitation. The laws are clear, and the Give It Back! Campaign was developed. The campaign is focused on 29,775 acres of land located in the Eagle Mountains. The campaign enjoys the support of many individuals and organizations including National Parks Conservation Association, California Wilderness Coalition, Sierra Club, Western Land Exchange Project, Environmental Health Coalition, California Certified Organic Farmers, Desert Survivors, Center for Biological Diversity, and Inland Mexican Heritage to name a few.

A team of citizens traveled to the subject lands to observe any intrusions and to determine if it is appropriate to restore to Joshua Tree National Park.



#### GIVE IT BACK! SURVEY TEAM

L to R front row:

Terry Frewin; CN/RCC Desert Committee, Jim Dodson; Wild Planet Strategy Team Holly Owens; CA Wild Heritage Campaign

L to R back row:

Howard Gross; NPCA, Larry Charpied; Citizens for the Chuckwalla Valley Bryn Jones; California Wilderness Coalition

Not shown, Donna Charpied, Center for Community Action and Environmental Justice

We traveled approximately 11 miles through Joshua Tree National Park on the Black Eagle Mine Road to the western boundary beginning the Give It Back! lands that are currently administered by the Bureau of Land Management.



The only discernable difference between Park and BLM lands is the sign

We drove about another 3 miles through BLM lands and then hiked to the “back door” of the defunct Eagle Mountain iron ore mine. Along the way we noticed very little intrusions from OHV use. We observed a few old mining claims, but mostly the land is pristine and untrammled by man.



background  
bridge for an Eag



On

We LOVE these lands! We have absolutely no argument against restoring those lands back to JOTR where they belong.

Lastly, the Charpieds and the Desert Protect Society prefer the option to restore the 1936 boundary lands including the land Kaiser illegally sold to Eagle Crest. We think it is a safe assumption to think that conservation groups and environmental activists would desire that the entire enchilada be included in the study and acquired by JOTR. Anything less than that would be a hollow victory, with JOTR hanging in the balance. The Eagle Mountain Mine has served the purpose intended by Congress when it conveyed to Kaiser Steel authorization to mine iron ore in Joshua Tree National Park. Having fulfilled its purpose, it is time to make Joshua Tree National Park whole again. We shall add to these comments if necessary prior to the end of the comment period through August 21, 2015.

When NPS Director Jon Jarvis was the Director of the Pacific Region he flew to Desert Center and the Charpieds provided him, then Superintendent Curt Sauer and, his staff a tour of the area. When we concluded our tour, Mr. Jarvis said, “We are saving the last of the best”. Mr. Jarvis has a unique opportunity to put those words into action!

In conclusion, we want to applaud the managers at JOTR for having the foresight to acquire lands in the Eagle Mountains. We wish you much success!

Respectfully Submitted,

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Donna Charpied, for DPS

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Larry Charpied, for the Charpieds

cc  
Interested Parties

December 24, 2015

Director Neil Kornze  
Bureau of Land Management  
1849 C Street NW, Rm. 5665  
Washington, DC 20240

Dear Director Kornze:

The undersigned organizations and businesses have a deep and vested interest in protecting the abundant wildlife, rich historical and archaeological sites, water resources and spectacular vistas of Joshua Tree National Park.

We are opposed to the development of the Eagle Crest Pumped Storage Project because it would pump copious amounts of groundwater from a fragile desert aquifer during the worst drought in California history; harm iconic wildlife like bighorn sheep, desert tortoise and golden eagle; and threaten the ecological integrity of Joshua Tree National Park.

We urge the BLM to conduct a full Environmental Impact Statement (EIS) for the Eagle Crest Pumped Storage Project's 500 kilovolt gen tie line that analyzes this key piece of infrastructure's impacts to Joshua Tree National Park in the context of the entire development and includes the findings of the NPS' ongoing boundary study to ensure that publicly funded efforts are working together to further understanding and full analysis of the region.

Home to Golden Eagles, desert tortoises, and bighorn sheep, the BLM's Eagle Mountain lands were once part of Joshua Tree National Park. The area is surrounded on three sides by Joshua Tree National Park's federally designated wilderness and has also been at the center of decades of controversy over inappropriate, harmful development proposals. The Desert Renewable Energy Plan, which analyzes the best places to locate renewable energy in the California desert, recently proposed new conservation lands in the area and the region is connected to important and beautiful BLM Wilderness areas.

Thanks to the advocacy of hundreds of thousands of park supporters, we recently helped block the nation's largest landfill from being built in this special place. These victories have prompted the NPS to study the area for inclusion into Joshua Tree National Park, but one threat remains: the Eagle Crest Pumped Storage Project.

Let's not let this misguided project reverse the decades of conservation work to protect this region and the opportunity to return all of the Eagle Mountain Lands to Joshua Tree National Park.

Sincerely,

## **ORGANIZATIONS**

**Patrick Donnelly, Executive Director  
Amargosa Conservancy  
Shoshone, CA**

**Sarah Kennington, President  
Morongo Basin Conservation Association  
Joshua Tree, CA**

**Ryan Henson, Senior Policy Director  
CalWild (California Wilderness Coalition)  
Redding, CA**

**Drew Feldmann, Conservation Committee  
Chair  
San Bernardino Valley Audubon Society  
San Bernardino, CA**

**Robin Kobaly, Executive Director  
The Summer Tree Institute  
Former botanist for the California Desert  
Conservation Area Plan Staff and BLM  
California Desert District Botanist  
Morongo Valley, CA**

**Drew Feldmann, Conservation Committee  
Chair  
San Bernardino Valley Audubon Society  
San Bernardino, CA**

**Catherine Svehla, PhD., Founder  
Myth in the Mojave  
Joshua Tree, CA**

**Tom O'Key, Founder  
Southern California Desert Video  
Astronomers  
Joshua Tree, CA**

**Eva Soltes, Founder/Director  
Harrison House Music, Arts and Ecology  
Joshua Tree, CA**

**Meg Foley, Executive Director  
Joshua Tree National Park Association  
Joshua Tree, CA**

**Ted Quinn, Director  
Radio Free Joshua Tree  
Joshua Tree, CA**

## **BUSINESSES**

**Cheryl Kandel, Owner  
Stitch Art Studio  
Joshua Tree, CA**

**Miriam Taylor, Owner  
Taylored Books  
Joshua Tree, CA**

**Ryon Weber, Owner  
Pie for the People  
Joshua Tree, CA**

**Scott Cutler and Steve Pratt, Owners  
Sacred Sands Bed and Breakfast  
Joshua Tree, CA**

**Miriam Seger, Owner  
Rustic Modern Rentals  
Joshua Tree, CA**

**John Schuster, Owner  
Starlite  
Joshua Tree, CA**

**Kimberly Green, Owner  
Treebird  
Joshua Tree, CA**

**Xihomara Alvarez, Owner  
Joshua Tree Trading Post  
Joshua Tree, CA**

**Douglas Buckley, Owner  
The Buzzards Roost East  
Joshua Tree, CA**

**Suzanne Nielson, Owner  
The Buzzards Roost West  
Joshua Tree, CA**

**Linda Perry, owner  
Joshua Tree Health Foods  
Joshua Tree, CA**

**Jenny Quaquadah, Owner  
The Grateful Desert  
Joshua Tree, CA**

**Ron Cone and Deb Bollinger, Owners  
Bollinger Consulting  
Joshua Tree, CA**

**Gillin, Ginger**

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**Subject:** FW: Eagle Crest Pumped Storage Project Must Have Full Environmental Impact Statement

----- Forwarded message -----

From: **Barbara Martin** <[npca@npca.org](mailto:npca@npca.org)>

Date: Mon, Dec 28, 2015 at 11:17 PM

Subject: Eagle Crest Pumped Storage Project Must Have Full Environmental Impact Statement

To: Sally Jewell <[blm\\_ca\\_eagle\\_mountain\\_pumped\\_storage\\_project@blm.gov](mailto:blm_ca_eagle_mountain_pumped_storage_project@blm.gov)>

Dec 29, 2015

Secretary Sally Jewell  
Department of the Interior, 1849 C Street, N.W.  
Washington, DC 20240

Dear Secretary Jewell,

After years of conservation work by many stakeholders, the Eagle Mountain region, which is located next to Joshua Tree National Park, was saved from the development of the nation's largest landfill and is currently being studied for inclusion into Joshua Tree National Park. I am disappointed to hear that the area--home to iconic wildlife like bighorn sheep, golden eagles, and desert tortoises--is now threatened by the Eagle Crest Pumped Storage Project, which would pump millions of gallons of water a year from a fragile desert aquifer during what will likely be some of California's driest years on record.

Prior Bureau of Land Management (BLM) and National Park Service (NPS) reviews of the Eagle Crest Pumped Storage Project indicated that it would adversely impact the area's water and wildlife resources, as well as the ecological integrity of Joshua Tree National Park by creating artificial water sources that would increase the population of ravens that prey on the threatened desert tortoise. I respectfully request that the BLM conduct a full Environmental Impact Statement for the Eagle Crest Pumped Storage Project's transmission line--one that analyzes this key piece of infrastructure in the context of the entire development and incorporates the findings of the national park boundary expansion study.

Thank you for considering my comments.

Sincerely,

Ms. Barbara Martin  
4013 County Road 1508  
Jacksonville, TX 75766-6438

(903) 586-7575  
[baba222091@aol.com](mailto:baba222091@aol.com)